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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE BILL 2007

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)**

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE BILL 2007

OUTLINE

This bill will provide new principal legislation for the Australian Government's response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory.

Part 1 deals with introductory matters including commencement dates, definitional matters and sunsetting.

Part 2 introduces measures to modify the Northern Territory *Liquor Act* in order to give effect to restrictions on the possession, consumption, sale and transportation of liquor in the Northern Territory, particularly on land in areas prescribed in this bill.

Part 3 introduces a scheme of accountability intended to prevent, and detect, misuse of publicly funded computers located in the prescribed areas within the Northern Territory.

The scheme comprises five requirements applicable to the person in control of a publicly funded computer:

- installing, and keeping in place, a content filter designed to prevent, and record, access to illegal material;
- maintaining an acceptable use policy covering all users and confirming that all use will be audited;
- keeping records that identify each user;
- undertaking six monthly audits of material on, or accessed by, the computer; and
- providing to the Australian Crime Commission the outcome of any audit undertaken.

The computers will be audited to determine whether they contain, or have been used to access, illegal material. In addition to banned sexually explicit material, illegal material may include instances of other misuse, such as stalking, fraud, breaches of privacy or breaches of copyright. The outcome of an audit of a publicly funded computer will be provided to the Australian Crime Commission and it may be used either by the Australian Crime Commission itself, or passed on to a relevant law enforcement agency.

Part 4 of the bill provides for the immediate and later acquisition of five-year leases over certain Aboriginal townships in the Northern Territory for the purposes of the emergency response. The underlying tenure will be preserved, compensation will be paid for any acquisition of property including an option of paying rent, existing interests will be generally preserved or excluded, and provision will be made for early termination of the lease including when a township lease is granted. Part 4 also provides for the Australian Government to exercise the powers of the Northern Territory Government to forfeit or resume certain leases known as town camps during the five-year period of the emergency response and the option of acquiring a freehold interest over these areas.

Part 5 of the bill recognises that continuing and improving services that are provided by community services entities in those areas defined in this bill to be business management areas is a necessary step towards effectively addressing other problems experienced in these areas. These services include basic community needs such as housing construction and maintenance, community services and various types of municipal services such as waste collection and road maintenance. Part 5 of the bill provides powers that should assist in the Australian Government being able to flexibly allocate resources including government funds and the assets used to provide services and, where required, effectively address the performance of those entities required to deliver those services.

Part 6 amends Northern Territory law to prohibit the relevant authority, when exercising bail or sentencing discretion in relation to Northern Territory offences, from taking into consideration any form of customary law or cultural practice to lessen or aggravate the seriousness of the criminal behaviour of offenders and alleged offenders. Part 6 also strengthens Northern Territory bail provisions to better secure the safety of victims and witnesses in remote communities.

Part 7 introduces a new licensing regime that will apply to persons who operate community stores in Indigenous communities. The new licence will be called a 'community store licence'. The introduction of the community store licence is intended to address a number of concerns and ensure the proper delivery of the income management regime.

There are long-standing concerns that some stores in Indigenous communities are poorly managed and have low quality goods sold at high prices. Many Indigenous communities in the Northern Territory have only one community store. In very remote communities there may be no other store within hundreds of kilometres and even these may not be accessible during the wet season. Hence, the way community stores operate and the quality of the food that they provide are critical to the Australian Government's efforts to improve the lives of Indigenous people in the Northern Territory.

The quality and integrity of community stores is also important in the context of the introduction of income management for welfare recipients. This measure, which will ensure that funding is available to meet the basic needs of families, including for food and basic consumables, will involve the disbursement of some proportion of funds to community stores. Where stores will have a flow of income from welfare payments, it is important to ensure that they have sound financial management practices, are supported by high quality governance and the range and quality of goods is of a reasonable standard.

Part 8 deals with a number of miscellaneous matters.

Financial impact statement

Total resourcing for the measures in the bill for 2007-08 is $72.5 m.

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NOTES ON CLAUSES

This explanatory memorandum uses the following abbreviations:

- Land Rights Act means the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- Legislative Instruments Act means the *Legislative Instruments Act 2003*.

Part 1 – Preliminary

Clause 1 sets out how the Act is to be cited, that is, the *Northern Territory National Emergency Response Act 2007.*

Clause 2 provides when various Parts and clauses of the bill will commence.

Items 1, **2**, **5** and **6** of the table at **subclause 2(1)** provide that **Parts 1** (Preliminary), **2** (Alcohol), **3** (Requirements for publicly funded computers), **5** (Business management areas) and **8** (Miscellaneous), **clauses 31** (Grant of lease for five years), **34** (Preserving any existing right, title or other interest) and **64** (Modification of Part 4 of Schedule 1 by the regulations), **Schedules 1** (Property descriptions), **2** (Business management areas), **3** (Funding agreements) and **4** (Commonwealth management in business management areas: modification of Northern Territory laws), and anything in the bill not otherwise referred to in the table, will commence the day after the day on which the bill receives the Royal Assent.

Items 3 and **4** of the table at **subclause 2(1)** provide that **clauses 32** (Commencement of certain leases) and **33** (Commencement of certain other leases) commence on a day to be fixed by Proclamation, or, if they do not commence within 6 months from when the Act receives the Royal Assent, on the first day after that 6 month period.

Clause 3 defines a number of terms used generally in the bill.

assessable matters This term has the meaning given by **clause 93**, and is defined to include matters such as the quality, quantity and range of food and drinks available at the community store, the price of goods, the financial integrity of the store and remuneration practices of the store, and the capacity of the store to participate in the requirements of the income management regime.

Associations Act This term means the *Associations Act* of the Northern Territory. A note provides that the reference to the ***Associations Act*** is to be construed as a reference to that Act as originally enacted and as amended from time to time (see section 10A of the *Acts Interpretation Act 1901* of the Commonwealth).

authorised officer This term means the Secretary of the Department with responsibility for this Act or a person appointed by the Secretary under **clause 116**. The Secretary may appoint an appropriately qualified officer to be an ***authorised officer*** for the purposes of performing the functions of **Part 7** (Licensing of community stores). An officer is an Australian Public Service employee in the Department or any other person engaged by the Department under contract or otherwise to exercise powers or to perform functions or duties under **Part 7**.

bail authority This term means a court or a person authorised to grant bail under a law of the Northern Territory. Under the *Bail Act 2007* (Northern Territory), bail can be granted by either a member of the police force (who holds the rank of Sergeant, or higher rank, or any other member of the police force who is for the time being in charge of a police station), or by the court (by either a justice or a magistrate).

business management area This term means an area of land:

- that is covered by a five year lease granted under **paragraph 31(1)(b)**;
- that is referred to in **Parts 1** to **3** of **Schedule 1** to this bill;
- or a place in the Northern Territory that is specified in **Schedule 2**;
- or a place in the Northern Territory that is declared by legislative instrument to be a ***business management area***.

civil penalty provision This term means a subsection, or section that is not divided into subsections, that has set out at its foot the words 'civil penalty' and one or more amounts in penalty units.

A ***civil penalty provision*** is set out in a similar way to an offence and is subject to proceedings in court. However, it is enforced by civil proceedings that are subject to the procedures and rules of evidence in civil cases. Proof is on the balance of probabilities. A civil penalty provision only carries a financial penalty, not an imprisonment penalty. The imposition of a civil penalty does not constitute a criminal conviction.

Commonwealth interest This term means the rights, titles and interests in land vested in the Commonwealth under **clause 47**, excluding certain rights, titles and interests relating to minerals, petroleum and gas identified in **subclause 47(9)** and those rights, titles and interests preserved under **clause 48**.

Commonwealth Minister This term means the Minister administering the Act.

community services entity This term means:

- a community government council within the meaning of the *Local Government Act* (Northern Territory);
- an incorporated association within the meaning of the Associations Act;
- an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
- any other person or entity that performs functions or provides services in a business management area and that is specified by the Minister (whether by reference to a class of person or entity or otherwise), by legislative instrument.

Where a ***community services entity*** has been funded to provide services in a business management area, the powers set out at **Part 5** of the bill may be applied to that entity.

community store This term has the meaning given by **clause 92**, which essentially provides that it means a business with premises in a prescribed area in the Northern Territory or premises in an area in the Northern Territory specified by the Minister which has as one of its main purposes the provision of grocery items and drinks.

community store licence This term means a licence to operate a ***community store***.

criminal behaviour This term includes anything that forms part of the physical element of a particular offence; and any fault element relating to a physical element.

The physical element of an offence includes such things as conduct, circumstances and results constituting the offence.

The Criminal Code provides for four types of fault: intention, knowledge, recklessness and negligence.

Crown Lands Act This term means the *Crown Lands Act* of the Northern Territory. A note provides that the reference to the ***Crown Lands Act*** is to be construed as a reference to that Act as originally enacted and as amended from time to time (see section 10A of the *Acts Interpretation Act 1901* of the Commonwealth).

disallowance period For the purposes of regulations, this term means the period during which regulations made under this bill may be disallowed by Parliament. This period is calculated:

- beginning on the earliest day on which the regulations are laid before a House of the Parliament in accordance with section 38 of the Legislative Instruments Act; and
- ending on the day on which 15 sitting days of each House of Parliament have passed since the regulations were laid before the particular House of Parliament.

funding agreement This term means a written agreement or arrangement between the Commonwealth and a community services entity under which the entity is provided with funding to provide services in a business management area (whether or not the agreement or arrangement also makes provision in relation to other matters).

income management This term means the legislative scheme established

regime	under what will be the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*.
Liquor Act	This term means the *Liquor Act* of the Northern Territory. A note provides that the reference to the ***Liquor Act*** is to be construed as a reference to that Act as originally enacted and as amended from time to time (see section 10A of the *Acts Interpretation Act 1901* of the Commonwealth).
Liquor Regulations	This term means the ***Liquor Regulations*** of the Northern Territory. A note provides that the reference to the Liquor Regulations is to be construed as a reference to those Regulations as originally enacted and as amended from time to time (see section 10A of the *Acts Interpretation Act 1901* of the Commonwealth).
Local Government Act	This term means the *Local Government Act* of the Northern Territory. A note provides that the reference to the ***Local Government Act*** is to be construed as a reference to that Act as originally enacted and as amended from time to time (see section 10A of the *Acts Interpretation Act 1901* of the Commonwealth).
local government authority	This term means a body established for the purposes of local government by or under a law of the Northern Territory or a Land Council (within the meaning of the Land Rights Act). It includes an incorporated association declared by the Minister under section 101 of the Associations Act and a person or body declared by the Minister under section 128 of the Local Government Act.

native title rights and interests This term has the same meaning as in the *Native Title Act 1993*, where the expression ***native title*** or ***native title rights and interests*** means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

- the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders;
- the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters, and
- the rights and interests are recognised by the common law of Australia.

Northern Territory Minister This definition provides that the relevant Northern Territory Minister for **Part 4** is the Minister administering the Crown Lands Act or the *Special Purposes Leases Act*, as the case may be.

The relevant ***Northern Territory Minister*** for **Part 5** is the Minister administering the Local Government Act.

operator This term, when it is used in relation to a community store, means the person who is responsible for the overall management and administration of the store. If the person is a body corporate, the operator will usually be the body corporate that owns the community store business concerned.

penalty unit In relation to a civil penalty provision, this term has the same meaning as in section 4AA of the *Crimes Act 1914*, which defines the dollar value of a penalty unit.

Police Administration Act This term means the *Police Administration Act* of the Northern Territory. A note provides that the reference to the ***Police Administration Act*** is to be construed as a reference to that Act as originally enacted and as amended from time to time (see section 10A of the *Acts Interpretation Act 1901* of the Commonwealth).

prescribed area This term has the meaning given by **clause 4**.

publicly funded computer

This term means a computer acquired by an individual or body who receives public funding from the Commonwealth, a State or Territory or local government authority.

It includes computers acquired prior to the Act coming into effect, as long as the individual or body received public funds.

The term funding is used according to its general meaning, and includes money provided for a project or program, which may have been provided, for example, under statute, a contract, an arrangement or other form of agreement. Funding may be provided under a ***funding agreement*** or arrangement that is specifically for the purchase of computers or more generally to provide a program of services or infrastructure during the course of which computers are acquired. Funding may also include annual grants or loans to individuals or bodies to perform their usual administrative functions.

The term funding does not include income from governments in the form of salary and wages paid to an individual employee, income support payments made to individuals, reimbursement for expenses incurred, Medicare payments to doctors and other income of this nature.

To come within the definition, a publicly funded computer must be ordinarily located in the Northern Territory but it may have been bought or leased using funds provided by a government outside the Northern Territory.

relevant owner

This definition is for the purpose of identifying the persons who, by force of **clause 31**, grant to the Commonwealth a lease of land for five years. The relevant owner in relation to land is identified by reference to the land over which the Commonwealth is granted its leasehold interest, as the holder of the estate in fee simple in that land, or in the case of certain leasehold land, the Northern Territory.

responsible person	This term means the individual or head of a body with the custody and control of a publicly funded computer. This person, in relation to a company would be the chief executive officer, in relation to a school the principal, and in relation to an unincorporated association the president. If the computer is owned, or in the custody or control of an individual, that individual would be the person who is required to comply with the obligations under **Part 3**.
Special Purposes Leases Act	This term means the *Special Purposes Leases Act* of the Northern Territory.
Telecommunications Minister	This term means the Minister who administers the *Telecommunications Act 1997*.
working day	This term means a day that is not a Saturday or a Sunday or a public holiday in the Northern Territory.

Subclause 4(1) provides for prescribed areas of the Northern Territory. There are four types of areas that can be **prescribed areas**. Under **paragraph 4(2)(a)** prescribed areas are areas being Aboriginal land under the Land Rights Act. Under **paragraph 4(2)(b)**, roads, rivers, streams, estuaries or other areas are included, as often such areas are excluded from the statutory definition of Aboriginal land but need to be included for the purposes of prescribed areas. **Paragraph 4(2)(c)** makes areas normally referred to as community living areas prescribed areas. **Paragraph 4(2)(d)** and **subclause 4(3)** provide for areas known as town camps to be included as prescribed areas.

Subclause 4(4) provides that the Minister can either include or exclude areas as prescribed areas for the purposes of **subclause 4(2)**. It is intended that the Minister have the power to respond quickly to the emergency situation by prescribing areas or removing an area from the prescribed area as required. This also provides a mechanism where the areas covered by prescribed areas need to be adjusted because of any issues around precise boundaries or locations.

Subclause 4(5) provides that a declaration by the **Commonwealth Minister** under **subclause 4(3)** or **(4)** is a legislative instrument.

Clause 5 provides that the object of this Act is to improve the well-being of certain communities in the Northern Territory.

Clause 6 provides that this Act (other than **Parts 1**, **4**, **6** and **8** and **Schedule 1**) ceases to have effect at the end of the period of five years beginning on the day after the day on which this Act received the Royal Assent.

Part 2 – Alcohol

The Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (the Inquiry) found a strong association between alcohol misuse and the sexual abuse of children in the Northern Territory. The Inquiry did not suggest that alcohol is directly involved in, or responsible for, all instances of sexual abuse of children. However, the Inquiry did find the negative impacts of alcohol abuse result in environments where children are not safe and concluded that 'the lives of Aboriginal children are more important than the right to drink'.

The alcohol restriction measures in this bill are a response to the findings of the Inquiry and, along with the other measures in this bill, will help to create environments in which Aboriginal children in the Northern Territory will be safe and healthy.

Part 2 modifies the Liquor Act of the Northern Territory. Although the Liquor Act is modified by this bill, the new obligations, offences, penalties and requirements have effect as Northern Territory law. The Liquor Act will continue to operate in areas that are not prescribed areas and its provisions as modified will also apply to prescribed areas. For example, section 86 of the Liquor Act currently allows people to transport liquor across a general restricted area. The modifications will mean that people travelling around the Northern Territory by road are able to carry liquor across a prescribed area provided they do not consume or dispose of the liquor in that area as provided for by section 86 of the Liquor Act. Similarly, aircraft that land in a prescribed area are able to carry liquor provided the liquor is not consumed while the aircraft is on the ground and the final destination is not a prescribed area.

Division 1 – Preliminary

Clause 7 provides that expressions defined in the Liquor Act of the Northern Territory and used in this Part have the same meaning as in the Liquor Act.

Clause 8 provides that the Commission (that is, the Northern Territory Licensing Commission established by section 4 of the Northern Territory *Licensing Commission Act*) or the Director of Northern Territory Liquor Licensing must, if requested by the Commonwealth Minister to provide information relevant to the operation of this Part, take all reasonable steps to provide the information.

Clause 9 provides that the Liquor Act, the Liquor Regulations and the Police Administration Act have effect subject to the modifications in this Part in relation to a prescribed area. This means that the Northern Territory legislation will still have effect and will need to be read with this bill to identify which provisions are modified, for example, in relation to prescribed areas.

Clause 10 provides that the laws of the Northern Territory modified by this Part have effect as laws of the Northern Territory. In effect, the Liquor Act is to read as amended accordingly.

Division 2 – Prescribed Areas

Subclause 11(1) provides that the Commission must, if it is practicable to do so, put up notices at:

- the place where a customary access route enters the area; and
- the customary departure locations for aircraft flying into the area;

informing the public that it is an offence to bring liquor into the area, be in possession or control of liquor in the area, or consume, sell or otherwise dispose of liquor within the area. It also specifies the possible penalties for the offence.

Customary access route in this sense means usual or commonly used routes including roads or tracks. In some cases it may be a river or other water way.

Subclause 11(2) provides that the Commission must also put notices in a newspaper circulating in the relevant area advising of the change.

Subclause 11(3) provides that a failure to comply with **subclause 11(1) or (2)** does not invalidate a declaration made under clause 4 that an area is a prescribed area.

Clause 11 is very similar to section 85 of the Liquor Act. The effect of **clause 11** is to place a similar obligation on the Liquor Licensing Commission in respect of prescribed areas as it currently has for general restricted areas. The purpose of posting the notices is to ensure that people entering a prescribed area are aware of the offences in relation to liquor that apply within the prescribed area and the penalties that apply to an offence.

Clause 12 creates offences in relation to liquor within prescribed areas. It has harsher penalties for more serious offences such as the large scale transportation, selling or possession of liquor. However, it is also imposes fines for less serious offences, such as possessing or consuming alcohol. The intention is that having alcohol within a prescribed area is to be treated as a significant offence.

Clause 12 provides that the prohibitions and offences under the Liquor Act, that are applicable to general restricted areas, will also apply in all prescribed areas in the Northern Territory. This will enable alcohol to be controlled without delay in Indigenous communities where child abuse and neglect is occurring. This provision will apply as a short term measure, to enable these issues to be addressed immediately in the Northern Territory, because of the particular problems in Northern Territory Aboriginal communities, where alcohol abuse and child abuse are clearly connected. This clause is subject to the five-year sunset period applicable to the Northern Territory emergency response legislation.

It should be noted that there is an alternative process available under the Liquor Regulations for the issue of penalty infringement notices for minor offences providing a penalty of $100. This process is available under this legislation by virtue of **clause 23**.

Subclause 12(1) provides that the Liquor Act has effect as if:

- each prescribed area had been declared by the Commission to be a general restricted area under that Act; and

- the offences against subsection 75(1) of that Act, so far as they relate to a prescribed area, were replaced by the offences set out in this section.

Subclause 12(2) provides that a person commits an offence in a prescribed area if the person brings in liquor, has liquor in his or her possession or control or consumes liquor in the prescribed area.

The maximum penalty for an offence is 10 penalty units for a first offence or 20 penalty units for a second or subsequent offence.

Subclause 12(3) provides a defence to a prosecution for an offence under **subclause 12(2)**. If the defendant was engaged in recreational boating or commercial fishing activities on waters in a prescribed area and no declaration had been made under **subclause 12(8)** then the defence will apply. It is recognised that prescribed areas will include land covered by water, for example, rivers and estuaries. In many instances Aboriginal land (and therefore the prescribed area) is defined as going to the low water mark. Therefore the area between the low water mark and the high water mark (that is inter tidal waters) would be prescribed areas in such circumstances.

The boat having alcohol will have to enter the prescribed area covered by water from an area outside a prescribed area. The boat must be a kind of vessel used in navigation by water (see **subclause 12(14)**). The Boat must be on water. It is intended that recreational or commercial use of boats not be restricted by the alcohol ban but nor should boats be permitted to become part of schemes to circumvent the alcohol ban. Alcohol cannot be brought over a prescribed land area to supply a boat. This defence does not allow drinking on land such as from river banks or beaches.

Subclause 12(4) provides that a person commits an offence in a prescribed area if the person:

- supplies liquor to a third person; or
- transports liquor intending to supply any of it; or believing that another person intends to supply any of it, to a third person; or
- possess liquor intending to supply any of it to a third person;

and the third person is in a prescribed area.

The maximum penalty for an offence is 10 penalty units for a first offence or 20 penalty units for a second or subsequent offence.

Subclause 12(5) provides a defence to a prosecution for an offence under **subclause 12(4)**. It is the same defence as contained in **subclause 12(3)** for offences committed under **subclause 12(2)**, that is the defence of recreational boating or commercial fishing activities.

Subclause 12(6) provides that where person commits an offence in the same terms as **subclause 12(4)** but the amount of alcohol involved exceeds 1,350 millilitres the penalty is 680 penalty units or 18 months imprisonment. The serious penalties in relation to larger scale offences are intended to reinforce the initiatives in relation to the protection of Aboriginal children, stop the huge flow of alcohol into Aboriginal communities and repair endemic alcohol-related dysfunction. The offences and related penalties are not primarily targeted at users, who generally have personal health and social issues, but those profiting from the vulnerability of these people and communities. The penalties are similar to those prescribed under Queensland legislation.

Subclause 12(7) provides that a person who can prove that he or she did not have an intention or belief that the alcohol was to be supplied to another person as provided in **paragraph 12(6)(b)** will not be subject to the higher range of penalties.

Subclause 12(8) provides that a Commonwealth Ministerial declaration may be made which precludes the use of the recreational boating defence if necessary. Where concerns arise that the alcohol bans are being subverted by use of the recreational boating defence in particular areas, the subclause enables the removal of the defence in those particular areas.

Subclause 12(9) provides that a Ministerial declaration under **subclause 12(8)** is not subject to disallowance under section 42 of the Legislative Instruments Act. These are emergency measures and the need to respond quickly where people are circumventing the new restrictions is paramount. Preventing disallowance will promote certainty that the declarations will continue. Quick responses will ensure that the purpose of the alcohol measures is not undermined.

Subclause 12(10) provides that while an area is declared under **subclause 12(8)** the Commission must, if it is practicable to do so, put up notices where a customary access route enters the area stating that a defence under **subclauses 12(3) and (5)** is not available in relation to the area.

Subclause 12(11) provides that the Commission must also advertise in a newspaper circulating in a relevant area that a defence under **subclause 12(3) or (5)**, that is the defence of recreational boating or commercial fishing, is not available in relation to that area. This means that people will not be able to take alcohol into the declared area while engaging in recreational boating or commercial fishing.

Subclause 12(12) provides that failing to comply with **subclause 12(10) or (11)** does not invalidate a declaration under **subclause 12(8)**.

Subclause 12(13) provides that anything done in the normal course of a postal service will not create an offence. The provision will enable postal services to be maintained in prescribed areas without the potential for people providing those services to be prosecuted under the provisions of this clause. However, this only applies in relation to anything done in the normal course of the provision of a postal service. It will only apply to official postal services and not to any carriage of goods outside of an official postal service.

Subclause 12(14) provides for the following definitions for the purposes of this section:

> ***boat***, which is any kind of vessel used in navigation on water. This would not include devices intended to provide flotation such as for instance, an inflatable plastic or rubber mattress such as a lilo;
>
> ***postal service*** means a postal service within paragraph 51(v) of the *Constitution*. This would not include, for instance, an informal postal delivery service;
>
> ***supply***, which includes but is not limited to sale, exchange or gift.

Clause 12 should be read together with **clauses 13** and **14**, under which existing provisions in the Liquor Act, for granting licences and permits to access alcohol in prescribed areas, may continue to apply on the land affected. Individual persons within the prescribed areas may apply for a permit under section 87 of the Liquor Act as was allowed before these measures were introduced.

Clause 13 confers on the Commonwealth Minister the authority to determine whether licences for premises within existing general restricted areas (as defined in section 4 of the Liquor Act) should be allowed to continue to have effect and, if the licences should continue to have effect, whether further conditions should be attached to the licence to ensure the conditions give effect to strict alcohol management practices.

Subclause 13(1) has effect if, immediately before the commencement of this Part, a licence under the Liquor Act was in force within a prescribed area. **Subclause 13(2)** provides that subject to this section, the licence continues to have effect on the terms that it was issued subject to this clause of the bill. Nothing in this provision prevents the Liquor Commission from cancelling a licence as it otherwise is entitled to under the Liquor Act. **Subclause 13(3)** provides that the licence in a prescribed area will be subject to a new condition that takeaway sales of alcohol are banned unless the purchaser has a current permit issued under section 87 of the Liquor Act that is in force in relation to the relevant prescribed area. **Subclause 13(4)** provides that the Commonwealth Minister may give a notice to a licensee in a prescribed area (and to the Commission) prohibiting the sale of alcohol for consumption on the premises or away from the premises.

Subclause 13(5) provides that the Commonwealth Minister may, by notice in writing given to a licensee and the Liquor Licensing Commission, determine that the conditions of the licence are varied in a way specified in the notice. **Subclause 13(6)** provides that if a determination is made under **subclause (4) or (5)**, the Liquor Act and the licence has effect accordingly.

Subclause 14(1) provides that a permit issued under section 87 of the Liquor Act, (that is, a permit enabling a person in a general exemption area which will become a prescribed area under this Part to posses or consume alcohol in that area) whether before or after the commencement of this Part is subject to this bill. **Subclause 14(2)** provides that the Commonwealth Minister may, by notice in writing given to the permit holder, determine that the permit does not authorise a person to:

- bring liquor into;
- have liquor in his or her possession or under his or her control within; or
- consume liquor within;

a prescribed area.

Subclause 14(3) provides that the Commonwealth Minister may, by notice in writing given to the permit holder, determine that the conditions of the permit are varied in a way specified in the notice. **Subclause 14(4)** provides that if a determination is made under **subclause 14(2) or (3)**, the Liquor Act and the permit has effect accordingly.

The Liquor Licensing Commission has issued permits to people to allow them and their guests to consume liquor within a general restricted area. It is proposed that those permits will be reviewed. If it is considered necessary in order to give full effect to efforts to reduce consumption of liquor within prescribed areas, it may be necessary to withdraw or vary the permit while the area is a prescribed area. **Clause 14** will enable the Australian Government to give effect to such measures.

For both **clauses 13 and 14** there is no provision for merits review in relation to decisions by the Commonwealth Minister. Merits review is not considered appropriate given the emergency nature of these measures. There is a need for the Commonwealth Minister to be able to respond with certainty. The Commonwealth Minister needs to be able to quickly impose conditions so as to ensure that the alcohol ban is not being undermined by licences or permits.

Clause 15 provides that a court must not grant an interlocutory application unless exceptional circumstances apply. It is intended that the Commonwealth Minister will have the power to make prompt decisions in relation to the emergency situation. Exercise of such power includes addressing issues that go to the safety of individuals and communities. Only in exceptional circumstances should interlocutory relief be granted.

Clause 16 creates a penalty for removing or damaging notices which will provide information about the alcohol ban and the penalties applying for alcohol-related offences in the area.

Subclause 16(1) provides that the Liquor Act has effect as if it included the offence set out in this clause.

Subclause 16(2) provides that a person commits an offence if he or she removes or damages a notice explaining an alcohol ban. The maximum penalty for an offence against **subclause 16(2**) is five penalty units.

Subclause 16(3) provides a defence for actions which would otherwise fall within **subclause 16(2)** that were performed as part of a person's duties.

Clause 17 relates to seizure of vehicles. Its purpose is to ensure that a community is not disadvantaged by vehicle seizures resulting from the acts of individuals who might bring alcohol into a prescribed area using an asset intended for the benefit of a community. The type of vehicles covered by this measure include night patrol vehicles and community buses.

Subclause 17(1) provides that the Liquor Act has effect as if it included a provision in the same terms as **subclause 17(2)** of this section. **Subclause 17(2)** provides that an Inspector of Licensed Premises appointed under section 18 of the Liquor Act in deciding whether to seize a vehicle, under section 95, must have regard to whether the main use of the vehicle is for the benefit of a community as a whole and the hardship that might be caused to the community by the seizure of the vehicle.

Clause 18 provides that Division 4 of Part VII of the Police Administration Act of the Northern Territory applies to each prescribed area as if it were a public place.

The Police Administration Act provides members of the Northern Territory Police Force with the authority to, without warrant, apprehend and take a person into custody where that person is believed to be intoxicated with alcohol. The person is only held in custody for so long as it reasonably appears that the person remains intoxicated. A person so taken and held in custody may not be charged with an offence nor questioned in relation to an offence. It is a requirement of the Police Administration Act that an intoxicated person must be in a public place or trespassing on private property. This amendment extends that power to cover all property and areas in the prescribed areas. This means that police can deal with intoxicated people in prescribed areas. It recognises the established link between intoxication and violence and will enable the police to ensure the safety of the community.

Subclause 19(1) provides that the Commonwealth Minister may declare that this Division ceases to have effect. The intention is that as the emergency response takes effect the Commonwealth Minister will be able cease part or all of the emergency powers. **Subclause 19(2)** provides that the declaration is a legislative instrument, but section 42 of the Legislative Instruments Act does not apply to the declaration. That is, an instrument ceasing the powers in this bill will not be disallowable. It is not intended to leave these measures in place indefinitely and therefore there needs to be certainty that should the Commonwealth Minister decide to cease these powers the powers will not be re-commenced by disallowance. Part 6 of the Legislative Instruments Act deals with sunsetting. When the Commonwealth Minister has declared the provision to cease to have effect, the declaration will not be subject to sunsetting so as to ensure finality.

Division 3 – Sales of liquor for consumption away from licensed premises

It is an important element of the strategies for dealing with alcohol abuse and alcohol related violence and abuse to have appropriate measures in place to deter people from contravening the provisions of **Part 2**. This demands that well publicised processes be in place to ensure actions leading to the supply of alcohol to communities can be followed up and addressed. The effectiveness of the restrictions may be seriously compromised if licensees or their staff fail to comply with new identification and recording requirements. This link is recognised in the creation of offences around the identification requirements at the point of sale of more than the prescribed amount of takeaway alcohol.

Under **subclause 20**, if there is a sale of a quantity of alcohol exceeding 1,350 millilitres, where the seller knows or ought reasonably to know, that the alcohol was for consumption away from the premises there is an obligation to record information including the name and address of the purchaser and address or name of the area where the alcohol is intended to be consumed.

Various offences have been created for failing to do so. **Subclause 20(5)** provides that if records of the name and address of the purchaser and the intended location of the consumption of the alcohol are kept then that is a defence to an offence under **subclause 20(2) or (3)**. **Subclause 20(6)** provides the list of acceptable forms of identification, such as a driver's licence issued in Australia or a passport. The Liquor Commission may also determine other forms of suitable identification.

A quantity of three cartons of 375 millilitre cans or bottles containing a beverage with five percent or less alcohol by volume would not fall within this provision. Similarly, five cartons of 375 millilitres cans or bottles containing a beverage with two percent or less alcohol by volume would not fall within this section.

Subclause 20(1) provides that the Liquor Act has effect as if it included the offences set out in this section.

For purchases of alcohol above the 1,350 millilitres limit offences have been created for licensees, employees of licensees and the licensee where an employee commits an offence.

Subclause 20(2) provides the offence for licensees and a maximum penalty of 340 penalty units.

Subclause 20(3) provides the offence for an employee of a licensee of licensed premises and a maximum penalty of 60 penalty units.

Subclause 20(4) provides that a licensee of licensed premises commits an offence if an employee commits an offence under **subclause 20(3)** and the maximum penalty is 170 penalty units.

Subclause 20(7) provides a defence for licensees to an offence under **subclause 20(4)** if the licensee proves that he or she had taken all reasonable steps to ensure that the employee was aware of the obligations under this clause.

Subclause 21(1) provides that the Liquor Act has effect as if it included the offences set out in this section. **Subclause 21(2)** provides that a licensee commits an offence if the licensee fails to keep, for at least 3 years after the records are made, records as mentioned in **subclause 20(5)** of what will be the *Northern Territory National Emergency Response Act 2007*. This clause recognises that investigations and prosecutions of offences under these provisions may take some time to finalise. The maximum penalty for an offence against **subclause 21(2)** is 50 penalty units. **Subclause 21(3)** provides that a licensee must produce the records kept under **subclause 21(2)** to an inspector upon demand being made by the inspector on or at the premises to which the licence relates. The maximum penalty for an offence against **subsection 21(3)** is 50 penalty units.

Subclause 22(1) provides that the Commonwealth Minister may declare that this Division ceases to have effect**.** **Subclause 22(2)** provides that the declaration is a legislative instrument, but section 42 of the Legislative Instruments Act does not apply to the declaration, that is, an instrument ceasing the powers in **Division 3** will not be disallowable. It is not intended to leave these measures in place indefinitely and therefore there should be certainty so that should the Commonwealth Minister decide to cease these powers the powers will not be re-commenced by disallowance. Part 6 of the Legislative Instruments Act deals with sunsetting. When the Commonwealth Minister has declared the provision to cease to have effect, the declaration will not be subject to sunsetting so as to ensure finality.

Division 4 – Liquor Regulations

Clause 23 provides that the Liquor Regulations have effect as if the following offences included in the Liquor Act under **Division 2 of Part 2** of this bill were infringement offences for the purposes of those Regulations.

The offences are bringing, possessing, controlling or consuming liquor in a prescribed area (**subclause 12(2)**). It also includes the offence of supplying alcohol where the amount of alcohol is 1,350 millilitres or less (**subclause 12(4)**). It also includes the offence of removing or damaging notices put up by the Liquor Commission (**subclause 16(2)**).

Part 3 of the Liquor Regulations provides a system of infringement notices. Infringement notices may be issued by a police officer if the police officer reasonably believes that an offence has been committed. The amount payable for an infringement notice is $100. If a person issued with an infringement notice does nothing in response to the notice a range of sanctions may be utilised which include the making of a community work order. Individuals can contest an infringement notice by electing to have the matter dealt with in a court.

Subclause 24(1) provides that the Commonwealth Minister may declare that this Division ceases to have effect. **Subclause 24(2)** provides that the declaration is a legislative instrument, but section 42 of the Legislative Instruments Act does not apply to the declaration, that is, an instrument ceasing the powers in this bill will not be disallowable. It is not intended to leave these measures in place indefinitely and therefore there should be certainty so that should the Commonwealth Minister decide to cease these powers the powers will not be re-commenced by disallowance. Part 6 of the Legislative Instruments Act deals with sunsetting. When the Commonwealth Minister has declared the provision to cease to have effect, the declaration will not be subject to sunsetting so as to ensure finality.

Division 5 –Application of offences

Clause 25 provides that offences created by this Part will come into effect 28 days after this Act receives the Royal Assent.

Part 3 – Requirements for publicly funded computers

Clause 26 introduces an obligation for the responsible person to install an accredited filter on all computers covered by this Part. There is a requirement that filters be installed and maintained and updated as necessary when new software is released.

The filter function that allows for the blocking of content may be disabled for a specific period if a person using the computer needs to access material for work, research or study that would otherwise be blocked by the filter. In that case the blocking of content may be disabled while maintaining the monitoring function. This would allow access to the relevant sites without losing the record of the history of sites accessed.

Appropriate safeguards around the disabling of filters would need to be implemented by the responsible person in order to meet the obligations imposed by this part.

It will be a strict liability offence with a maximum penalty of five penalty units to fail to install and maintain an accredited filter.

A defence is provided to this offence, thus reversing the onus of proof. It would be a defence if the filter was intentionally disabled by a person other than the responsible person without his or her knowledge or consent.

In order to ensure the most effective filter software is installed the Telecommunications Minister will accredit programs that effectively filter material that can be accessed via the internet. The Minister must cause an accreditation to be published in the Commonwealth *Gazette*. This accredited list will be made available on the relevant websites and on request.

Clause 27 provides for the keeping of records identifying the people who used a computer; the user, at particular times on particular dates.

As the scheme is designed to provide for the audit of computers to ensure illegal material accessed by the computer is identified it may be necessary, depending on the nature of the material detected, to investigate further to determine whether a crime has been committed. To assist further investigation this provision provides a mechanism whereby the person who used the computer at the relevant time can be identified.

Records created under this provision may be made available to the Australian Crime Commission.

In the first year of operation the reporting period will be from the date of commencement of the legislation to 30 November following the date of commencement. The usual reporting period will be from 1 December to 30 November in the following year.

In order to allow enough time for any investigation to be completed, records must be kept for a period of three years from the end of the relevant reporting period. This means, in effect, that if a person is recorded as using the computer on 2 December 2007 that record will actually be held for a period just short of four years.

It will be a strict liability offence with a maximum penalty of five penalty units for the responsible person not to keep records as required.

Clause 28 requires that a policy for using publicly funded computers is developed and communicated to all users of the computer.

In the case of a body where only employees use the computer this policy may form part of the internal communications to staff. For example, it may be included in a code of conduct for the employees or communicated via the intranet site of that body or as a log on message.

In the case of computers that are accessible by the public the policy may need to be prominently displayed adjacent to the computer or given in writing to persons before they use the computer. Individuals must also have a policy for use of their own computers and advise anyone who uses their computer of this policy.

The provision requires that the policy state specific things that are prohibited. These things provide concrete examples where using the computer for accessing this type of material or engaging in activities for these purposes will constitute illegal activities. The Minister may, by legislative instrument, determine matters that must be included. If no determination is made the policy must contain all the matters specified in this provision.

In order to ensure the users are made aware that their use of the computer may be monitored and their name and other information may be provided to relevant law enforcement bodies, the responsible person must ensure computer users are informed of the policy. In order to comply with Privacy Principle 2 users will be advised that the user records and the results of the periodic audits may be made available to the Australian Crime Commission and, if appropriate, other law enforcement bodies.

Clause 30 (see below) provides that it will be a strict liability offence with a maximum penalty of five penalty units if the responsible person does not develop and communicate the policy to all users.

In order to assist the responsible person to comply with these requirements a model policy that may be adopted will be posted on the internet.

Clause 29 provides that the responsible person will be required to conduct and report on an audit of the computer at the end of a six-monthly period ending on 31 May and 30 November each year.

If 31 May or 30 November falls on a weekend or public holiday then the audit must be conducted on the next working day.

The Audit of computers is the principal component of the scheme that determines the extent to which illegal material may be located on publicly funded computers. The results of audits will determine whether other measures have successfully prevented illegal use of publicly funded computers. The record of the audit must be kept for a period of three years from the date on which the audit was conducted

The responsible person must also conduct an audit of any computer as soon as possible if he or she knows that the computer contains material that contravenes the law or if he or she is reckless that the computer contains such material or that such material has been accessed by the computer.

As the scheme applies to any publicly funded computer whenever purchased, the initial audit should identify illegal material already on computers at the date of the first audit. This may provide a benchmark from which the success of the scheme can be measured.

The results of audits must be provided to the Australian Crime Commission within 14 days of the date of which the audit was completed. A report must be provided whether or not illegal material was found.

The Australian Crime Commission may conduct further investigations of its own or pass on information to State or Territory law enforcement organisations.

The Minister must determine the form of the audit in writing published in the Commonwealth *Gazette*. The determination and approval of the form of the audit is not a legislative instrument. In developing the means of the audit the Minister will endeavour to develop a technical approach that will minimise compliance costs for the responsible person. In addition to publication in the Commonwealth *Gazette*, the form will be made available directly to bodies and organisations that receive funds under a Commonwealth funding agreement.

It is an offence carrying a maximum penalty of five penalty units if the computer is not audited as required.

A more serious offence carrying a maximum penalty of 10 penalty units would be committed where an audit is not conducted and the responsible person knows or is reckless as to whether the computer contains illegal material that contravenes a law of the Commonwealth, a State or a Territory and the computer does contain that material.

Clause 30 establishes a number of offences.

Subclause 30(1) provides that certain offences are offences of strict liability. Strict liability is an appropriate basis for these offences due to:

- the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case;
- the fact that the offence is minor;
- the fact that the requirements that must be complied with are administrative in nature;
- the fact that the elements of these offences are factual;
- the fact that the offence does not involve dishonesty or other serious imputation affecting the person's reputation; and
- the maximum penalty is at the smaller end of the scale.

While the Act comes into effect on the day after it receives Royal Assent, the offences created by this section apply only to conduct engaged in, on or after, 28 days from the day on which the Act receives Royal Assent. This delayed implementation will provide time for the responsible person to install filters, create a user log and publish an acceptable use policy.

Part 4 – Acquisition of rights, titles and interests in land

Division 1 – Grants of leases for five years

Subdivision A – Grant of lease

Subclause 31(1) provides for a lease to the Commonwealth, by the ***relevant owner*****,** of land referred to, under a heading, in **Parts 1 to 3 of Schedule 1** to the bill. The lease takes effect by operation of the bill.

Part 1 of Schedule 1 deals with Aboriginal land within the meaning of paragraph 3(1)(a) of the Land Rights Act *.*

Part 2 lists land, commonly referred to as 'community living areas', granted to associations under section 46(1A) of the *Lands Acquisition Act* of the Northern Territory.

Part 3 lists two other areas of land that have not been the subject of land grants under that legislation.

In addition to the land in **Parts 1 to 3 of Schedule 1**, the regulations may prescribe other land over which a lease is granted. The regulations may only prescribe land that is:

- Aboriginal land within the meaning of section 3(1)(a) of the Land Rights Act ;
- land granted under section 46(1A) of the *Lands Acquisition Act* of the Northern Territory*;* or
- certain other land in which the fee simple or a leasehold is held by specified entities at the commencement of this clause.

Subclause 31(2) provides for the term of a lease over land granted under **subclause 31(1)**. The commencement dates of 26 identified leases is the date of commencement of **clause 31**. The commencement dates of a further identified 25 leases of the Northern Territory is the date of commencement of **clause 32** and the dates of commencement of a further 13 leases over land in **Parts 1 to 3 of Schedule 1** is the date of commencement of **clause 33**. The lease over the land referred to in **clause 64** of **Schedule 1** will be the day after the **disallowance period** for the regulations made for this purpose. The date of commencement of leases over land prescribed by the regulations is the first day after the end of the disallowance period for the regulations.

Subclauses 31(3) and (4) provide for the exclusion from the lease granted under **clause 31** of any area of land over which a registered lease existed immediately before the commencement of **clause 31**. Land excluded from the **clause 31** lease may be included later under **subclause 34(6)** of the bill.

This provision does not apply in respect of leases of Nauiyu (Daly River), Finke or Kalkarindji, for which special provision is made in **clauses 39 and 40**.

All leases granted under **clause 31** come to an end five years after the time on which **clause 31** commences.

Clause 32 provides for leases referred to in **subparagraph 31((2)(a)(ii)** to commence at the time this clause commences.

Clause 33 provides for leases referred to in **subparagraph 31((2)(a)(iii)** to commence at the time this clause commences.

Clause 34 provides for the preservation of pre-existing rights, titles and interests in land covered by a lease granted under **clause 31**, other than native title rights and interests for which special provision is made in **clause 51**. These preserved rights, titles and interests continue in effect after the Commonwealth's lease takes effect.

Where the right, title or interest was granted by the owner of the land, **subclause 34(4)** makes clear that it continues on the same terms and conditions as applied immediately before the grant of the lease under **clause 31** as if the right, title or interest had been granted by the Commonwealth.

Subclause 34(5) allows the Minister to make a determination that **subclause 34(4)** does not apply, in any particular case, and at any time, while the lease granted under **clause 31** exists.

A copy of a determination under **subclause 34(5**) must be given to the holder of the right, title or interest and may be given to the relevant owner of the land and any other relevant person.

A determination under **subclause 34(5)** must specify when it takes effect which must not be earlier than the day on which the determination is given to the holder of the right, title or interest.

Subclause 34(8) provides that **subclause 34(4)** is to be disregarded for the purposes of subsection 19A(11) of the Land Rights Act. The effect of this is that if a township lease is granted under section 19A of that Act during the course of a five year lease, then subsection 19A(11) will take effect in relation to rights, titles or interests that were granted by the Land Trust as if the conversion in **subclause 34(4)** to rights, titles or interests granted by the Commonwealth had not occurred.

Subclause 34(9) is for the assistance of readers because a determination under this clause is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Subclause 34(10) extends the meaning of 'right, title or interest' in this clause to include a licence.

Clause 35 provides for certain terms and conditions of a lease granted under **clause 31**. The leases will not prevent the indigenous communities from living on and using the land. The leasing provisions will facilitate the repair of buildings and infrastructure in this crisis situation by ensuring that the Government has unfettered access to the land and assets in question.

Subclause 35(1) provides for the Commonwealth to have exclusive possession and quiet enjoyment of the land, subject to preserved rights, titles and interests (**clause 32**), for so long as the lease granted under **clause 31** exists. Where the relevant owner is a Land Trust, the Land Trust is able to grant another lease in accordance with section 19 of the Land Rights Act (**clause 52**).

Subclause 35(2) makes clear that no rent is payable by the Commonwealth, except in accordance with **clause 62**.

Subclause 35(3) provides the Commonwealth with immunity from liability for any loss, damage or injury to any person or property arising out of the condition of the land or buildings and infrastructure at the time the lease commences.

Only the Commonwealth may terminate or vary a lease granted under **clause 31**. **Subclause 35(4)** prohibits the relevant owner of the land covered by a lease from terminating or varying the lease.

Subclause 35(5) permits the Commonwealth to sublease, license, part with possession of, or otherwise deal with, its interest in the lease, but the Commonwealth may not transfer the lease.

The Commonwealth may, under **subclause 35(6)**, vary a lease granted under **clause 31** by excluding land from the lease or by including land in the lease which had been excluded by **clause 33**.

Subclause 35(8) provides for a variation to a lease, or a termination of a lease, granted under **clause 31**, to be effected by the Minister giving notice to the relevant owner of the land. In the case of a variation which excludes land from, or includes land in, a lease, **subclause 35(9)** requires the notice to specify the land so excluded or included. **Subclause 35(10)** provides for a variation or termination to specify when it takes effect which must not be earlier than the day on which the notice is given to the relevant owner.

Subclause 35(11) is for the assistance of readers because a notice under this clause is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Subclause 36(1) provides for additional terms and conditions of a lease granted under **clause 31** to be determined by the Minister.

Subclause 36(2) allows the Minister to vary terms and conditions determined by him or her, whether generally, or in relation to a particular lease granted under **clause 31**.

Subclause 36(3) requires notice of a variation made by the Minister to be given to the relevant owner of the land.

Subclause 36(4) makes provision for when a variation under **subclause 35(2)** takes effect.

Subclause 36(5) makes clear that terms and conditions determined under **subclause 36(1)** and a variation under **subclause 36(2)** are legislative instruments, but they are not subject to disallowance. It is essential for all the terms and conditions of a lease under **clause 31** to be certain at the commencement of the leases. It is also appropriate for the Minister to have the power to vary these additional terms and conditions given that the major terms of leases under **clause 31** are in the bill. For this reason section 42 of the Legislative Instruments Act, providing for disallowance has been disapplied to the determination of additional terms and conditions.

Subclause 36(6) makes clear that terms and conditions determined by the Minister under this clause may be varied only in accordance with this clause.

Subclause 37(1) provides for the termination of a right, title or interest preserved under **clause 32** and of a lease of land excluded, by **clause 33**, from the lease granted under **clause 31**. The Commonwealth may terminate such a right, title or interest, or lease, at any time while the lease granted under **clause 31** is in force.

Subclause 37(2) provides that this clause does not apply to certain rights granted under the Land Rights Act.

Subclause 37(3) provides for the Commonwealth to terminate a right, title, interest or a lease under this clause by giving notice to the holder of the right, title, interest or lease. The Minister may also give notice to the relevant owner of the land and to any other relevant person.

Subclause 37(4) provides for the notice to specify when the termination takes effect, which must not be earlier than the day on which the notice is given to the person who holds the right, title, interest or lease.

Subclause 37(5) is for the assistance of readers because a notice under this clause is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Subclause 37(6) makes its clear that a Land Trust may grant a lease under section 19A even if a lease is granted under **clause 31** of this bill.

Subclause 37(7) provides that the **clause 31** lease is terminated if the Land Trust grants a township lease that covers all the land covered by the **clause 31** lease.

Subclause 37(8) deals with the situation where a township lease covers only part of the land over which a **clause 31** lease exists. In such a case, the **clause 31** lease is varied to exclude the part covered by the township lease.

Subclause 37(9) provides for when the termination or variation takes effect.

Subdivision B – Special provisions relating to particular land

Clause 38 provides for the continuation of the traditional land claim made under section 50(1)(a) of the Land Rights Act over Canteen Creek.

Subclause 38(1) provides for the grant of the lease under **clause 31** of the land under the heading Canteen Creek in **Part 3 of Schedule 1** to have effect despite section 67A of the Land Rights Act.

Subclause 38(2) makes it clear that the grant of a lease under **clause 31** has no effect on an application made under section 50(1)(a) of the Land Rights Act which has not been finally disposed of before the lease takes effect.

Subclause 38(3) provides that, if a deed of grant of an estate in fee simple in that land is executed as a result of such an application, the deed is of no effect until the **clause 31** lease ends.

Clause 39 provides for the circumstances at Daly River and applies despite **clause 33**. **Subclause 39(1)** provides for the variation of a lease (the earlier lease) in force over land under the heading Daly River, in **Part 3 of Schedule 1,** at the commencement of the lease granted under **clause 31**. The variation of the earlier lease excludes the land the subject of the **clause 31** lease from the earlier lease from that time.

Subclause 39(3) makes it clear that the earlier lease is not otherwise affected by the grant of the **clause 31** lease.

Subclause 39(4) provides for the earlier lease to be varied, if it is still in force, to include the land excluded under **subclause 39(1)** when the lease granted to the Commonwealth under **clause 31** comes to an end.

Subclause 39(5) makes clear that a variation of the earlier lease under **subclause 39(4)** takes effect when the **clause 31** lease ends.

Clause 40 makes provision for the circumstances at Finke and Kalkarindji where there is an existing lease and applies despite **clause 33**. In Finke and Kalkarindji, earlier leases to the leaseholders referred to in paragraph (e) of the definition of ‘relevant owner’ are suspended for so long as the lease to the

Commonwealth under **clause 31** is in force. The suspension ends when the lease to the Commonwealth under **clause 31** ends.

Clause 41 provides for section 20(2) of the Crown Lands Act to have effect in relation to community living areas in **Part 2 of Schedule 1**, covered by a lease granted under **clause 31**, as if the reference to the Minister in that section includes the Commonwealth Minister.

Clause 42(1) provides for rights of way where a lease granted under **clause 31** includes more than one area of land to enable the Commonwealth, its employees and agents to access all of those areas of land by using existing roads and tracks between the areas of land.

Subclause 42(2) makes similar provision for rights of way where land covered by a lease under **clause 31** forms part of a grant of land (a community living area) under section 46(1A) of the *Lands Acquisition Act* of the Northern Territory. The provision also applies to certain other land. Where a road through another part of the land gives access to the land covered by the lease under **clause 31**, the Commonwealth, its employees and agents have a right to use that road to access the leased land.

Division 2 – Acquisition of rights, titles and interests relating to town camps

Subdivision A – Resumption and forfeiture of land under the Special Purposes Leases Act

Subdivision A allows the Commonwealth Minister to exercise the powers of the Northern Territory Minister or Administrator, as modified by this Subdivision, in relation to the forfeiture and resumption of special purpose leases.

Clause 43 provides that the ***Special Purposes Leases Act***, as modified by this Subdivision, has effect in relation to the town camps identified in **Part 4 of Schedule 1** to the bill, and any other town camps in the Northern Territory prescribed by the regulations for the purposes of this clause.

The Special Purposes Leases Act, as modified by this Subdivision, operates as a law of the Northern Territory.

Clause 44 provides for the modifications of the Special Purposes Leases Act to permit the ***Commonwealth Minister*** to forfeit a special purposes lease, and to resume land included in a special purposes lease.

Subclause 44(1) modifies the Special Purposes Leases Act to enable the Commonwealth Minister to forfeit a special purpose lease over land referred to in **clause 43** on the same grounds (except one) as those on which the Northern Territory Minister may forfeit such a lease. The same objection processes and compensation entitlements apply where the Commonwealth Minister exercises the power of forfeiture as where the Northern Territory

Minister exercises the power. Any compensation payable under the Special Purposes Leases Act is payable by the Commonwealth.

The Special Purposes Leases Act is also modified to enable the Commonwealth Minister to exercise the Northern Territory Administrator's power to resume land included in a special purposes lease over land referred to in **clause 43** for the same reasons as the Northern Territory Administrator may resume the land. Where the Commonwealth Minister exercises the power of resumption, not less than 60 days notice must be given. The same objection processes and compensation entitlements apply where the Commonwealth Minister exercises the power of forfeiture as where the Northern Territory Administrator exercises the power. Any compensation payable under the Special Purposes Leases Act is payable by the Commonwealth.

Subclause 44(2) makes it clear that, in exercising the powers of forfeiture and resumption under this clause, the Commonwealth Minister acts in place of the Northern Territory Minister or the Northern Territory Administrator, as the case may be.

Subclause 44(3) provides that the regulations may make further modifications to the Special Purposes Leases Act for the purposes of this clause.

Subclause 44(4) ensures that the Commonwealth Minister may commence action to forfeit leases and resume land referred to in **clause 43**, under the Special Purposes Leases Act, only for the period of five years after the commencement of this provision

Subdivision B – Resumption and forfeiture of land under the Crown Lands Act

Subdivision B allows the Commonwealth Minister to exercise the powers of the Northern Territory Minister or the Administrator, as modified in this subdivision, in relation to the forfeiture and resumption of Crown leases.

Clause 45 provides that the **Crown Lands Act**, as modified by this Subdivision, has effect in relation to the town camps identified in **Part 4 of Schedule 1** to the bill, and any other town camps in the Northern Territory prescribed by the regulations for the purposes of this clause.

The Crown Lands Act, as modified by this Subdivision, operates as a law of the Northern Territory.

Clause 46 provides for the modifications of the Crown Lands Act to permit the Commonwealth Minister to forfeit a lease granted under the Crown Lands Act, and to resume land included in a lease granted under that Act.

Subclause 46 (1) empowers the Commonwealth Minister to take action to forfeit a lease over land referred to in **clause 45** on the same grounds as those on which the Northern Territory Minister may take action to forfeit such a lease. The same objection processes and compensation entitlements apply where the Commonwealth Minister exercises the power of forfeiture as where the Northern Territory Minister exercises the power. Any compensation payable under the Crown Lands Act is payable by the Commonwealth.

The Commonwealth Minister is also empowered to exercise the Northern Territory Administrator's power to resume land included in a lease over land referred to in **clause 45** for the same reasons as the Northern Territory Administrator may resume the land. Where the Commonwealth Minister exercises the power of resumption, not less than 60 days notice must be given. The same objection processes apply where the Commonwealth Minister exercises the power of forfeiture as where the Northern Territory Administrator exercises the power. Any compensation payable under the Crown Leases Act is payable by the Commonwealth.

Subclause 46(2) makes it clear that, in exercising the powers of forfeiture and resumption under this clause, the Commonwealth Minister acts in place of the Northern Territory Minister or the Northern Territory Administrator, as the case may be.

Subclause 46(3) provides that the regulations may make further modifications to the Crown Lands Act for the purposes of this clause.

Subclause 46(4) ensures that the Commonwealth Minister may commence action to forfeit leases and resume land referred to in **clause 45**, under the Crown Lands Act, only for the period of five years after the commencement of this provision

Subdivision C – Vesting rights, titles and interests in land in the Commonwealth

Clause 47 enables the Commonwealth to acquire long term rights, titles and interests, including freehold title, in town camps, that is, land which is the subject of a lease under the Special Purposes Leases Act or the Crown Lands Act and is referred to in **Part 4 of Schedule 1** or in regulations made for the purposes of this provision. (Note that land may be removed from **Part 4 of Schedule 1** by regulations referred to in **clause 64**.)

The Commonwealth acquires the ***Commonwealth interest*** by giving the Northern Territory Government a notice under **subclause 47(1)** specifying the land. The notice may also specify rights, titles and interests that are preserved under **clause 48**.

Subclause 47(2) provides that the Commonwealth may give notice under **subclause 47(1)** in relation to a lease, or land covered by a lease, under the Special Purposes Leases Act or the Crown Lands Act even if the Commonwealth Minister or the Northern Territory Minister has not taken any action to forfeit the lease or resume the land the subject of the lease.

Subclause 47(3) provides that, subject to **clause 48** (which deals with the preservation of special rights, titles and interests) and **clause 51** (which deals with any native title rights and interests), the Commonwealth interest vests in the Commonwealth and is freed from all other rights, titles and interests, trusts, restrictions, mortgages, licences, contracts and charges.

Subclause 47(4) provides that the Commonwealth interest vests by force of this provision at the time specified in the notice which cannot be earlier than the day on which the notice is given under **subclause 47(1)**.

Subclauses 47(5) and **(6)** provides for the notice to be published in the Commonwealth *Gazette* within 7 days but that failure to comply with this notice requirement does not invalidate the notice.

Subclause 47(7) is for the assistance of readers as the notice given under **subclause 47(1)** is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Subclause 47(8) ensures that the Commonwealth Minister may give a notice under this section only for the period of five years after the commencement of this provision.

Subclause 47(9) excludes rights, titles and interests in minerals, petroleum and gas from the rights, titles and interests which the Commonwealth may acquire under this provision.

Clause 48(1) provides for the preservation of certain rights, titles and interests in relation to land specified in a notice under **subclause 47(1)** where the notice specifies those rights, titles and interests as rights, titles and interests to be preserved.

Subclause 48(2) provides that, where a right, title or interest in land is preserved under **subclause 48(1)**, the Commonwealth Minister may make a determination that the preserved right, title or interest has effect, for so long as the Commonwealth holds the Commonwealth interest in the land, as if it were granted by the Commonwealth on the same terms and conditions as applied immediately before the notice was given.

Subclause 48(3) provides that the Commonwealth Minister must give a copy of a determination made under **subclause 48(2)** to the holder of the preserved right, title or interest and may give a copy of the determination to any other relevant person.

Subclause 48(4) provides that a determination under **subclause 48(2)** takes effect at the time specified in the determination and cannot take effect earlier than the day when the determination is given to the holder of the preserved interest.

Subclause 48(5) is for the assistance of readers as the determination given under this clause is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. .

Subclause 48(6) extends the meaning of 'right, title or interest' in this clause to include a licence.

Clause 49(1) provides for the termination by the Commonwealth of certain rights, titles and interests in land which have been preserved under **clause 48**. The Commonwealth may only terminate such rights, titles and interests for so long as the Commonwealth holds the Commonwealth interest.

Clause 49(2) provides that the Commonwealth terminates a right, title or interest in land under this clause by giving notice in writing to the holder of the right, title or interest. The Minister may also give a copy to any other relevant person.

Clause 49(3) provides that the termination of the right, title or interest takes effect by operation of the clause at the time specified in the notice which cannot be earlier than the day on which the notice is given to the holder of the right, title or interest.

Clause 49(4) is for the assistance of readers as the notice given under **subclause 49(3)** is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Division 3 – Effect of other laws in relation to land covered by this Part

Clause 50 provides for **Divisions 1 and 2** of this Part and **clause 52** to have effect despite the provisions of any other law of the Commonwealth or of the Northern Territory and, in particular, despite the provisions of the *Lands Acquisition Act 1989.*

The 'future act' provisions in the *Native Title Act 1993* (Native Title Act) currently do not apply to Aboriginal land granted under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) (see subsection 233(3) of the Native Title Act, and subparagraph (a)(iii) of the definition of 'Aboriginal/Torres Strait Islander land or waters' in section 253 of that Act).

Clause 51 deals with possible native title issues for land covered by **Part 4**.

The 'future act' provisions in the Native Title Act currently do not apply to Aboriginal land granted under the Land Rights Act (see subsection 233(3) of the Native Title Act) and subparagraph (a)(iii) of the definition of 'Aboriginal/Torres Strait Islander land or waters' in section 253 of that Act.

Subparagraph 51(1)(a)(i) and **paragraph 51(1)(e)** provide that if native title exists in respect of any land the subject of a lease granted by force of **subclause 31(1)** then, whether or not the land is Aboriginal land granted under the Land Rights Act, the 'future act' provisions in the Native Title Act do not apply in relation to:

- the grant of the lease; or

- any act that is related to the grant of the lease (for example, ancillary measures done under other Commonwealth or Northern Territory laws, such as the grant of licences or permits, that may be required in order to build or refurbish houses and infrastructure in the lease area).

Subparagraph 51(1)(a)(ii) and **paragraph 51(1)(e)** provide that if any native title exists in respect of town camp land in respect of which rights, titles and interests are vested in the Commonwealth under **clause 47**, then the 'future act' provisions in the Native Title Act do not apply in relation to:

- the vesting; or

- any act that is related to the vesting (for example ancillary measures done under other Commonwealth or Northern Territory laws).

Paragraphs 51(1)(b) and **(e)** provide that if any native title exists in respect of any land in relation to which any other act is done by, under or in accordance with any other provision of **Part 4**, or any act that is related to such other act (for example, ancillary measures done under other Commonwealth or Northern Territory laws), then the 'future act' provisions in the Native Title Act do not apply to the act.

Paragraphs 51(1)(c) and **(e)** provide that if any native title exists in respect of land that is resumed, or in respect of which a lease is forfeited in accordance with **Division 2** of **Part 4**, then the 'future act' provisions in the Native Title Act do not apply to:

- any act done on that land by the Commonwealth, the Northern Territory, or an Authority within the meaning of the Land Rights Act, in the five year period from the day this clause commences, other than land in which a Commonwealth interest exists; or

- any act that is related to such an act (for example, ancillary measures done under other Commonwealth or Northern Territory laws).

Paragraphs 51(1)(d) and **(e)** provide that if any native title exists in respect of any land on which a Commonwealth interest exists, then the 'future act' provisions in the Native Title Act do not apply in relation to:

- any act done on that land by the Commonwealth, the Northern Territory or an Authority within the meaning of the Land Rights Act; or

- any act that is related to such an act (for example, ancillary measures done under other Commonwealth or Northern Territory laws).

If native title exists in respect of land the subject of the acts covered by **subclause 51(1)**, **subclause 51(2)** provides that the 'non-extinguishment principle' applies to the acts. The 'non-extinguishment principle' is defined in section 238 of the Native Title Act. When the non-extinguishment principle applies to an act, native title is suppressed, but not extinguished, while the act remains in force. When the act is removed or otherwise ceases to have effect, any native title can again have full effect subject to any other acts which remain in force.

Subclause 51(3) defines 'Authority' as having the meaning in the Land Rights Act.

Clause 52 provides for the interaction of the five year leasing provisions with various provisions in the Land Rights Act. **Subclauses 52(1)** and **(2)** enable a Land Trust to grant a lease (under section 19 of the Land Rights Act) of land covered by a lease under **clause 31**, with the written consent of the Minister. If this occurs the land covered by the lease under **clause 31** is varied by force of **subclause 52(3)** to exclude the land covered by the section 19 lease. **Subclause 52(4)** provides that such a variation takes effect at the time the section 19 lease takes effect. **Subclause 52(5)** makes clear that a Land Trust can not otherwise deal with estates or interests in land covered by a lease under **clause 31**.

Subclause 52(6) provides that section 27(3) of the Land Rights Act (requiring Ministerial consent to contracts) does not apply if the Land Trust and the Commonwealth agree on the amount of compensation to be paid for a lease under **clause 31**.

Subclause 52(7) makes clear that where the Commonwealth grants interests under **clause 34(5)**, the provisions in subsection 19(8) of the Land Rights Act requiring the consent of the Land Council do not apply.

Subclause 52(8) makes clear that any compensation paid to a Land Council (on behalf of a Land Trust) in relation to a lease under **clause 31** must be paid out in accordance with subsection 35(4) of the Land Rights Act.

Clause 53 provides for section 18 of the *Public Works Committee Act 1969* to have no application to work proposed to be carried out on land covered by a lease granted under **clause 31**;

- land in which a Commonwealth interest exists; or

- land which has been resumed or forfeited by the Commonwealth in accordance with **Division 2** of this Part but in which there is no Commonwealth interest.

In relation to land resumed or forfeited in accordance with **Division 2** of this Part in which there is no Commonwealth interest, section 18 of the *Public Works Committee Act 1969* has no application only for the period of five years after the commencement of this clause.

Clause 54 provides that the Minister may, in a legislative instrument, specify other laws of the Commonwealth which have no effect to the extent that they regulate, hinder, or prevent the doing of an act in relation to:

- land covered by a lease granted under **clause 31**;

- land in which a Commonwealth interest exist; or

- land which has been resumed or forfeited by the Commonwealth in accordance with **Division 2** of this Part but in which there is no Commonwealth interest.

In relation to land resumed or forfeited in accordance with **Division 2** of this Part, in which there is no Commonwealth interest, these other Commonwealth laws will not apply only for the period of five years after the commencement of this clause.

This is to ensure that the implementation of the emergency response is not prevented by the operation of particular Commonwealth laws.

Clause 55 provides that the Minister may lodge with the Northern Territory Registrar-General, or other appropriate officer, notification certified by the Minister of dealings in land which are effected by or under this bill. The dealings in land are specified in **subclause 55(1)** and include the grant of a lease under **clause 31**, the variation or termination of such a lease, the termination of a right, title, interest or lease under **clause 36** or **49**, the vesting of rights, titles and interests in land under **clause 47**, and any other dealing in land that occurs under or by force of the bill or the Special Purposes Leases Act or the Crown Lands Act for the purposes of this bill.

Subclause 55(3) requires the officer with whom the notification is lodged in accordance with **subclause 55(2)**, to give effect to it as if it were a grant, conveyance, memorandum or instrument of transfer under Northern Territory law.

Clause 56 provides exemptions from Northern Territory stamp duty and similar taxes in relation to the grant or variation of a lease granted under **clause 31,** the vesting of rights, titles and interests under **clause 47**, and the grant of any sublease by the Commonwealth under **subclause 34(5)**.

Clause 57 disapplies, in relation to land covered by a lease under **clause 31**, the procedures for subdivision under Northern Territory laws relating to the transfer of land.

Clause 58 enables the Governor-General to make regulations to modify the effect of certain Northern Territory laws in relation to:

- land covered by a lease granted under **clause 31**;
- land in which a Commonwealth interest exists; and
- land which has been resumed or forfeited by the Commonwealth in accordance with **Division 2** of this Part but in which there is no Commonwealth interest.

In relation to land resumed or forfeited in accordance with **Division 2** of this Part, in which there is no Commonwealth interest, regulations made in accordance with this clause may modify the effect of Northern Territory laws only for the period of five years after the commencement of this clause.

This is to ensure that the implementation of the emergency response is not prevented by the operation of particular Northern Territory laws.

Clause 59 preserves the application of Northern Territory laws to:

- land covered by a lease granted under **clause 31**;
- land in which a Commonwealth interest exists; and
- land which has been resumed or forfeited by the Commonwealth in accordance with **Division 2** of this Part but in which there is no Commonwealth interest

to the extent that they can operate concurrently with this bill or regulations.

This clause applies in relation to land resumed or forfeited in accordance with **Division 2** of this Part, in which there is no Commonwealth interest, only for a period of five years after the commencement of this clause.

Division 4 – Miscellaneous

Clause 60 provides for the payment of compensation for acquisition of property.

Subclause 60(1) disapplies subsection 50(2) of the *Northern Territory (Self-Government) Act 1978* in relation to any acquisition of property that occurs as a result of:

- the operation of this part of the bill;

- any act done in relation to land covered by a lease granted under **clause 31**, land on town camps resumed or in respect of which a lease is forfeited by the Commonwealth under the Special Purposes Leases Act or the Crown Lands Act, or land in which a Commonwealth interest exists; or

- any act done by the Commonwealth Minister under the Special Purposes Leases Act or the Crown Lands Act.

Subclause 60(2) provides that if any of the matters referred to in **subclause 60(1)** would result in an acquisition of property from a person within the meaning of section 51(xxxi) of the *Constitution*, otherwise than on just terms, the Commonwealth is liable to pay reasonable compensation to the person.

Subclause 60(3) provides that, if the amount of compensation cannot be agreed between the Commonwealth and the person, the person may take proceedings in a court of competent jurisdiction for a determination of reasonable compensation.

Subclause 60(4) defines **acquisition of property** and **just terms** for the purposes of **subclause 60(2)**. These terms are defined as having the same meanings as in section 51(xxxi) of the *Constitution*.

Clause 61 provides for certain matters which the court must take into account in determining a reasonable amount of compensation. These are any amounts of rent paid or payable under **clause 62** in respect of land covered by a lease under **clause 31**, any amounts of compensation paid or payable by the Commonwealth under the Special Purposes Leases Act or the Crown Lands Act in respect of the resumption or forfeiture of leases over town camps, and any improvements funded by the Commonwealth at any time.

Subclause 62(1) provides that the Commonwealth Minister may ask the Northern Territory Valuer-General to determine a reasonable rent to be paid by the Commonwealth for land covered by a lease under **clause 31**. Where the lease is varied to exclude land, the Minister may request that a new reasonable rent be determined.

Subclause 62(2) provides that the Valuer-General must comply with such a request.

Subclause 62(3) provides the Valuer-General with powers under the *Valuation of Land Act* of the Northern Territory to assist him comply with the request, including the power of delegation.

Subclause 62(4) provides for the Valuer-General not to take account of the value of improvements on the land in determining a reasonable rent.

Subclause 62(5) provides for the Commonwealth to pay the amount of reasonable rent determined by the Valuer-General to the relevant owner of the land for so long as the lease under **clause 31** is in force.

Clause 63 provides for special appropriations for amounts payable by the Commonwealth under **clauses 60** and **62**, under the Special Purposes Leases Act, the Crown Lands Act, and for amounts which have been received by the Commonwealth and are to be paid to the relevant owner of the land.

Subclause 64(1) provides power for the regulations to remove, at any time, areas of land included in **Part 4** of **Schedule 1** from the Schedule. This power is intended for use in situations where, for example, an Indigenous housing organisation subleases all or a substantial part of its leasehold to the Northern Territory Government on a long-term (99 year) basis.

Subclause 64(2) provides that amendments made under **subclause 64(1)** are to be treated for the purposes of the *Amendments Incorporation Act 1905* as if they were made by an Act.

Part 5 – Business management areas

Division 1 – Funding agreements

Division 1 provides the Commonwealth with powers to vary and terminate Commonwealth funding agreements, under which funding is provided to communities in the business management areas, during the period of the emergency response. These powers will be able to be exercised on the Commonwealth's behalf by the agency responsible for the funding and the agency's representatives as provided for under the relevant agreement.

The purpose of **Division 1** is to allow the Commonwealth to adjust the allocation and management of funding provided to communities in the business management areas in order to respond to the needs and priorities of the emergency response.

Clause 65 enables the Commonwealth to vary or terminate funding agreements.

Subclause 65(1) provides that the power to vary a funding agreement and the deemed inclusion of the clause at **Schedule 3** will apply to any funding agreements that are current at the time of commencement and any funding agreements entered into on or after the day of commencement.

Subclause 65(2) provides for the Commonwealth to make variations to funding agreements with respect to matters concerning the management of the funding. The Commonwealth will be able to vary a funding agreement by including new terms and conditions or omitting existing terms and conditions with respect to the release of funding, the ways funds are to be spent, reporting requirements, the appointment of a person to control the funds to be paid under the agreement, and the use, management or security of assets purchased with the funding.

Subclause 65(3) provides that where a funding agreement does not include a clause in substantially the same terms as the standard clause set out at **Schedule 3** to the bill, that clause will be taken to be included in the agreement.

The standard clause at **Schedule 3** provides for the termination or reduction in scope of an agreement at the discretion of the Commonwealth. This standard clause is frequently included in Commonwealth funding agreements. The deemed inclusion of such a standard clause in those funding agreements in which it is not currently included, will ensure consistency in the terms and conditions under which a funding agreement may be terminated, or reduced in scope, throughout the communities included in the business management areas.

A standard clause that enables the Commonwealth to either terminate or reduce the scope of a funding agreement will allow the Commonwealth to effectively respond to changes in Government policy and the needs and priorities of the relevant communities and provide for the most efficient allocation of funding.

Whereas the Commonwealth may be able to rely on the common law doctrine of executive necessity to terminate an agreement, or reduce the scope of an agreement in similar circumstances, the inclusion of the clause at **Schedule 3** that expressly provides for this will also provide a mechanism for the calculation of compensation payable by the Commonwealth.

Clause 66 deals with the effect of variations to funding agreements.

Subclause 66(1) provides that where a funding agreement is varied in accordance with **subclause 66(2)**, the variation will take effect on the day on which the variation is made and have effect for the remainder of the term of the agreement.

Subclause 66(2) provides that if a funding agreement is taken to be varied by the inclusion of the clause at **Schedule 3** to the bill, the variation will have effect for the remainder of the agreement.

Division 2 – Directions for business management areas

The purpose of **Division 2** is to allow the Minister to make directions with respect to the provision of Commonwealth and Northern Territory funded services and assets required for the delivery of those services in business management areas. These powers will allow the Minister to respond to a failure on the part of a relevant entity to provide the services for which it is responsible and to ensure that the resources of the entity are efficiently employed for the benefit of the community.

The powers to direct an entity in relation to the delivery of a service or assets required for those services apply where an entity has received Commonwealth or Northern Territory funding to provide those services. In addition to services that have been directly funded by the Northern Territory or the Commonwealth this will cover local government functions that may be carried out by an entity using funds provided by grant from, or under an agreement with, the Northern Territory or Commonwealth.

Subdivision A – Directions relating to services

Clause 67 provides that the Minister may give a direction to a community services entity in relation to the delivery of services.

Subclause 67(1) sets out the circumstances in which the power to give a direction to a community services entity in relation to the delivery of a service will be available. **Subclause 67(1)** provides that this power applies if the Minister is satisfied that a service is either not being provided in a business management area, or is not being adequately provided, and Commonwealth or Northern Territory funding has been provided that could be used by the community services entity to provide that service.

Subclause 67(2) provides that a direction may be given to a community services entity to provide a service, to deliver a service in a specified way (including by directing that a specified person is to do a specified thing in relation to the provision of the service), or to provide a service within a specified period.

Subclause 67(3) provides that a direction under **subclause 67(2)** may incorporate any other instrument or writing as in force at the time of incorporation or from time to time. This will permit the Minister, for example, to direct a community services entity to provide a service in accordance with Northern Territory or local government regulations or by-laws that regulate the provision of similar services by local government bodies operating in other communities in the Northern Territory.

Where a direction is given which requires that a service be delivered in accordance with terms set out in another instrument, by allowing the terms of that instrument to be incorporated as in force from time to time it will ensure that the service continues to be delivered consistently with the standards, and under the same conditions, that apply to the delivery of the service elsewhere.

Subclause 67(4) provides that a direction given under **subclause 67(2)** is a legislative instrument for purposes of the Legislative Instruments Act. This is declaratory only because a direction given under **subclause 67(2)** is a Ministerial direction, and therefore neither disallowance of the instrument under section 42 nor sunsetting of the instrument under Part 6 of the Legislative Instruments Act apply by virtue of subsections 44(2) and 54(2) of that Act, respectively.

Subdivision B – Directions relating to assets

Clause 68 provides that the Minister may give a direction to a community services entity in relation to non-fixed assets that are required for the purpose of delivering a Commonwealth or Northern Territory funded service in a business management area.

Subclause 68(1) sets out the circumstances in which the power to give a direction in relation to assets may be given to a community services entity. **Subclause 68(1)** provides that this power applies if a community services entity owns, controls or possesses an asset, the entity provides services in a business management area and the Minister is satisfied that the use of the asset is required for providing services in the same business management area and funding has been provided by the Commonwealth or the Northern Territory that could be used to provide those services.

Subclause 68(2) provides that a direction may be given to a community services entity, for the purpose of providing funded services in an business management area, to use an asset in a particular way, manage an asset in a particular way, or to transfer ownership or possession of an asset to another community services entity, the Commonwealth or a specified person.

Subclause 68(3) provides that if a direction is given to transfer an asset, the Minister may also direct the transferee to use or manage the transferred asset in a particular way, or transfer the asset to a community services entity, the Commonwealth, or a specified person.

Subclause 68(4) provides that a direction under **subclause 68(2)** is a legislative instrument for purposes of the Legislative Instruments Act. This is declaratory only because a direction given under **subclause 68(2)** is a Ministerial direction, and therefore neither disallowance of the instrument under section 42 nor sunsetting of the instrument under Part 6 of the Legislative Instruments Act apply by virtue of subsections 44(2) and 54(2) of that Act, respectively.

Subdivision C – Compliance

Clause 69 provides that if a person does not comply with a direction given under **Division 2** (being a direction in relation to services in a business management area or a direction in relation to the use or management of assets required to be used in providing services in a business management area) a civil penalty of up to 50 penalty units applies. (If an entity fails to comply with a direction, an injunction may also be sought from the Federal Court (see **clause 89**).)

Subdivision D – Miscellaneous

Clause 70 deals with how a direction relates to existing laws.

Subclause 70(1) provides that a direction given under this Division has effect despite a Northern Territory law, an instrument made under a law of the Northern Territory, or the constitution of a community services entity.

Subclause 70(2) provides that if a direction under section 181A of the Local Government Act is in force at the time a direction under this Division is given, then both directions apply to the extent that they can operate concurrently. However, to the extent there is any inconsistency between the two directions, the direction given under this Division prevails. Section 181A of the Local Government Act provides that the relevant Northern Territory Minister can direct a council which has failed to comply with a provision under that Act to take certain action to comply with that provision. It is envisaged that directions under section 181A of the Local Government Act might potentially arise because many community services entities are community government councils incorporated under the Local Government Act.

Clause 71 provides that in the event a direction is given to a community services entity under this Division, the Minister may publish such a direction. It is envisaged that publication will aid transparency and encourage compliance with a direction.

Division 3 – Observers of community services entities

The purpose of **Division 3** is to enable the Commonwealth to have access to, and knowledge of, the workings of community services entities that perform functions or provide Commonwealth or Northern Territory funded services within business management areas. This will be done by allowing the Commonwealth to appoint observers of such entities.

It is envisaged that this will provide for greater transparency of the operations of these entities. Also, a better understanding of these entities will facilitate better decision-making under **Divisions 1** and **2** to **Part 5** of the bill.

Clause 72 provides for the Minister to appoint observers to community services entities.

Subclause 72(1) provides that the Minister may appoint one or more persons to be an observer of a community services entity that performs functions or provides services in a business management area.

Subclause 72(2) provides that an observer is entitled to attend the meetings (however described) of a community services entity or a committee of the entity.

Subclause 72(3) provides that an observer appointed to a community services entity under **subclause 73(1)** has the same rights and obligations as other members belonging to that entity, other than voting rights, and for the purposes of section 48A of the *Interpretation Act* (Northern Territory) (which provides for participation in meetings by telephone) is treated as a member.

Subclause 72(4) provides that the entitlement of an observer to attend meetings extends to being present at any deliberations of the entity or committee with respect to a matter or to be present during any voting of the entity.

Subclause 72(5) provides that a community services entity must not impose fees in respect of an observer appointed under **clause 72**.

Clause 73 provides that the Minister must give written notice to a community services entity when a person is appointed as an observer. A community services entity must give a person appointed as an observer notice of the time and place of any meetings of the entity, copies of documents and papers to be considered at the meetings and minutes of (or, if there are no minutes, notices of decisions made at) previous meetings. If the entity is unable to do this at the same time, and in the same way, as for other members of the entity, then it must do so as quickly as reasonably possible.

Clause 74 provides that if a community services entity fails to comply with requirements under **clause 73** in relation to notifying observers at the same time, and in the same manner, as for other members, a civil penalty of up to 50 penalty units applies.

Clause 75 provides that **Division 3** of **Part 5** applies despite a law or instrument (however described) of the Northern Territory, or the constitution of a community services entity.

Division 4 – Commonwealth management in business management areas

The purpose of **Division 4** is to modify Northern Territory legislation to give the Commonwealth the same powers as the Northern Territory (with necessary and appropriate modifications) to place certain types of community services entit under external administration for failures relating to the provision of Commonwealth or Northern Territory funded services in a business management area.

The community services entities that are responsible for providing services in business management areas are, for the most part, community government councils incorporated under the Local Government Act, or incorporated associations incorporated under the Associations Act. The effect of **Division 4** is to modify the Local Government Act and Associations Act to confer powers under that legislation on the Commonwealth Minister.

Division 4 provides the Commonwealth Minister with the ability to exercise specific powers that the relevant decision-makers under the Local Government Act and the Associations Act, respectively, may exercise in relation to the suspension and dismissal of members and the appointment of external managers.

Division 4 does not deal with community services entities that are corporations established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* because that Act confers on the Registrar of Aboriginal and Torres Strait Islander Corporations a power to appoint special administrators.

Subdivision A – Commonwealth management of community government councils

Clause 76 provides that expressions used in **Table 1** in **Schedule 4** that are defined in the Local Government Act have the same meaning as in that Act.

Clause 77 deals with the effect of the Local Government Act.

Subclause 77(1) provides that the Local Government Act has effect subject to the modifications in this Subdivision in relation to community government councils (as entities incorporated under that Act). The modifications of the Local Government Act are set out in the other provisions of this Subdivision and **Table 1** in **Schedule 4**.

Subclause 77(2) provides that the Local Government Act, as modified by this Subdivision, has effect as a law of the Northern Territory.

Clause 78 deals with Commonwealth management of community government councils.

Subclause 78(1) provides that the Local Government Act has effect as if the Commonwealth Minister had the same powers as the Northern Territory Minister under Part 13 of that Act, but only in relation to community government councils and subject to **clause 78** (which among other things modifies Part 13 of the Local Government Act). The effect is that the Commonwealth Minister may exercise powers under Part 13 of the Local Government Act, which deals with the suspension and dismissal of council members and the appointment of external managers.

Subclause 78(2) places a limit on the Commonwealth Minister's power under subsection 264(1) of the Local Government Act to suspend all the members of a community government council, in that the Commonwealth Minister may exercise the power only if the ground for suspension relates to the provision of services by the council in a business management area, and the Commonwealth Minister is satisfied that Commonwealth or Northern Territory funding has been provided to the council that could be used to provide the services.

Subclause 78(3) provides that the Local Government Act has effect in relation to the exercise by the Commonwealth Minister of powers under that Act as if that Act were modified as set out in **Table 1** in **Schedule 4** and as if references in Part 13 of that Act to the Northern Territory Minister were references to the Commonwealth Minister. The result is that the Local Government Act is 'modified' only to the extent necessary for the purpose of allowing the Commonwealth Minister to exercise powers already provided for under that Act.

The modifications set out in **Table 1** in **Schedule 4** will not affect the ordinary use of these powers under Part 13 of the Local Government Act by the Northern Territory Minister, except for the purpose of dealing with the interaction of the Northern Territory Minister's and Commonwealth Minister's powers. Therefore, for the purposes of the exercise of these powers by the Northern Territory Minister, Part 13 will, in effect, operate without being affected by most of these modifications. However, where there are express limitations as set out under **clause 12** in **Table 1** of **Schedule 4** in relation to the exercise of the powers by the Northern Territory Minister, the Northern Territory Minister must only exercise those powers in accordance with those limitations.

Subclause 78(4) provides that, for the purposes of **clause 78, Table 1** in **Schedule 4** (referred to in **subclause 78(3)**) may be amended by the regulations. **Table 1** in **Schedule 4** provides specific modifications to Part 13 of the Local Government Act.

Table 1 sets out the modifications to the Local Government Act required at the time of enactment, but it is considered necessary to include a power to further modify that Act to deal with the possibility of the Northern Territory Assembly amending that Act in the future. In addition, there are certain aspects of the Local Government Act scheme (elections) for which modification will only be necessary in particular contingencies.

The option of leaving the detailed modifications out of the bill and providing generally for modifications by regulations (or other legislative instrument) was considered. However, the current approach is preferred because the Commonwealth Parliament will be able to enact the bill knowing exactly what modifications are necessary (at least at the time of enactment).

Other options were considered such as providing for future modifications directly by regulation, rather than by the amendment of the Schedule to the Act. However, the proposed approach of providing for regulations to amend the Schedule is preferred because:

- it will result in all modifications remaining in a single place (that is, the Schedule); and

- it will make the modifications all accessible in progressive consolidated versions of the Act as published. Readers will not have to access the regulations as such to find out the current form of the modifications.

Subclause 78(5) provides that in the event amendments are made to **Table 1** in **Schedule 4** by the regulations, any reprint of the Act will incorporate these amendments in **Table 1**. That is, for the purposes of the *Amendments Incorporation Act 1905*, **subclause 78(5)** declares that any amendments made to **Table 1** in **Schedule 4** are to be treated as if they were made by an Act thus allowing any reprint of this Act to include these amendments.

Subdivision B – Commonwealth management of incorporated associations

Clause 79 provides that expressions used in **Table 2** in **Schedule 4** that are defined in the Associations Act have the same meaning as in that Act.

Clause 80 deals with the effect of the Associations Act.

Subclause 80(1) provides that the Associations Act has effect subject to the modifications in this Subdivision in relation to incorporated associations (as entities incorporated under that Act).

Subclause 80(2) provides that the Associations Act, as modified by this Subdivision, has effect as a law of the Northern Territory.

Clause 81 deals with Commonwealth management of incorporated associations.

Subclause 81(1) provides that the Associations Act has effect as if the Commonwealth Minister had the same powers as the Northern Territory Commissioner of Consumer Affairs (who administers that Act) under Division 2 of Part 9 of that Act in relation to an incorporated association, but subject to **clause 81** (which among other things modifies Division 2 of Part 9 of the Associations Act). The effect is that the Commonwealth Minister may exercise powers under Northern Territory legislation. Division 2 of Part 9 of the Associations Act deals with the appointment of statutory managers to administer the affairs of incorporated associations.

Subclause 81(2) places a limit on the Commonwealth Minister's power under subsection 78(1) of the Associations Act to appoint a statutory manager to administer the affairs of an incorporated association, in that the Commonwealth Minister may exercise the power only if the ground for appointment relates to the provision of services by the association in a business management area and the Commonwealth Minister is satisfied that Commonwealth or Northern Territory funding has been provided to the association that could be used to provide the services.

Subclause 81(3) provides that the Associations Act has effect in relation to the exercise by the Commonwealth Minister of powers under that Act as if that Act were modified as set out in **Table 2** in **Schedule 4** and as if references in Division 2 of Part 9 of that Act to the Northern Territory Commissioner were references to the Commonwealth Minister. The result is that the Associations Act is 'modified' Act only to the extent necessary for the purpose of allowing the Commonwealth Minister to exercise powers already existing under that Act.

The ‘modifications’ set out in **Table 2** in **Schedule 4** will not affect the ordinary use of these powers under Division 2 of Part 9 of the Associations Act by the Northern Territory Commissioner, except for the purpose of dealing with the interaction of the Northern Territory Commissioner’s and Commonwealth Minister’s powers. Therefore, for the purposes of the exercise of these powers by the Northern Territory Commissioner, Division 2 of Part 9 will, in effect, operate without being affected by most of these modifications. However, where there are express limitations as set out under **clause 5** in **Table 2** of **Schedule 4** in relation to the exercise of the powers by the Northern Territory Commissioner, the Northern Territory Commissioner must only exercise those powers in accordance with those limitations.

Subclause 81(4) provides that, for the purposes of **clause 81, Table 2** in **Schedule 4** (referred to in **subclause 81(3)**) may be amended by the regulations. **Table 2** in **Schedule 4** provides specific modifications to Division 2 of Part 9 of the Associations Act. The reason for allowing that the Schedule may be amended by regulations is substantially the same as set out above in relation to **subclause 78(4)**.

Subclause 81(5) provides that in the event amendments are made to **Table 2** in **Schedule 4** by the regulations, any reprint of the Act will incorporate these amendments in **Table 2**. That is, for the purposes of the *Amendments Incorporation Act 1905*, **subclause 81(5)** declares that any amendments made to **Table 2** in **Schedule 4** are to be treated as if they were made by an Act thus allowing any reprint of this Act to include these amendments.

Subclause 81(6) provides that the *Northern Territory Commissioner* means the Commissioner within the meaning of the Associations Act, who is the Commissioner for Consumer Affairs within the meaning of the *Consumer Affairs and Fair Trading Act* (Northern Territory).

Division 5 – Enforcement

Subdivision A – Civil penalties

Clause 82 provides that the Federal Court may order a person to pay a pecuniary penalty for contravening a civil penalty provision.

Subclause 82(1) provides that in the event a person has contravened a direction given under **clauses 67** and **68** or has contravened requirements with respect to appointing observers under **clause 73** (to which civil penalty provisions in **clauses 69** and **74** apply respectively), the Secretary may, within 6 years of that contravention, apply to the Federal Court for an order that the person pay the Commonwealth a pecuniary penalty.

Subclause 82(2) provides that upon an application having been made to a Federal Court under **subclause 82(1)**, the Court may, if satisfied that the person has contravened a civil penalty provision, order payment for each contravention. However, the amount ordered to be paid for each contravention must not exceed the maximum amount specified in the civil penalty provision.

Subclause 82(3) provides the Court with a number of factors that it must have regard to when determining the amount of a pecuniary penalty. These factors include the nature and extent of the contravention.

Subclause 82(4) provides that the Court must apply the rules of evidence and procedure for civil matters when hearing and determining such applications made under **clause 82**.

Clause 83 provides that the contravention of a civil penalty provision applies to persons who aid, abet, counsel or procure others to contravene a civil penalty provision, or induce others to contravene a civil penalty provision, or conspire to contravene a civil penalty provision.

Clause 84 provides that a Court may relieve a person who has contravened a civil penalty provision either wholly or partly from liability if the person has a reasonable excuse, and having regard to all the circumstances of the case, the person ought fairly to be excused for contravening that provision.

The purpose for making available a defence based on grounds of a 'reasonable excuse' is that there will be some circumstances in which it would be appropriate and fair to excuse a community services entity from liability for failing to comply with a direction (**clauses 67** and **68**) or the requirements with respect to appointing observers (**clause 73**). However, it is not possible to anticipate all of the possible circumstances in which it would be appropriate to excuse a community services entity from liability.

An additional reason for a comparatively broad defence like the 'reasonable excuse' defence is that in many remote communities it falls to a single community services entity to provide all of a community's services. As such, what might be appropriate as a defence for a failure to comply with a direction in relation to one kind of service, could be very different from what might be appropriate as a defence for a failure to comply with a direction to provide another and completely unrelated kind of service.

Subclauses 84(2) to **(4)** provide that if a person has reason to believe that proceedings for the contravention of **clauses 69** or **74** will or may be begun against that person, he or she may apply to the Federal Court for relief under **clause 84**.

Clause 85 provides that, if necessary, the Commonwealth may enforce a Court order in relation to the payment of a pecuniary penalty as if it was a judgment of the Court.

Clause 86 provides that where the Secretary has reasonable grounds to suspect that a person can give relevant information in relation to an application for a civil penalty order under **clause 82**, the Secretary may, by written notice to that person, require that person to give all reasonable assistance in connection with the application made under **clause 82**. A failure to comply with a request for assistance under **subclause 86(2)** is an offence and a person who commits such an offence is liable to a penalty of up to 30 penalty units.

The purpose for **clause 86** is to ensure that the Court is able to properly consider an application made under **clause 82**.

Subclause 86(6) provides that a requirement made to a person by the Secretary to give information under **subclause 86(2)** is not a legislative instrument.

Clause 87 provides that where an act or thing is required to be done within a specified period of time (for example, **paragraph 67(2)(c)** permits a direction in relation to the provision of a service to specify a time frame), the obligation to do the act or thing continues, despite the specified time period having lapsed, until that act or thing is done. In the event a person refuses or fails to comply with a requirement described under **subclause 87(1)** and the failure or refusal contravenes a civil penalty provision, that person will be held to have contravened the civil penalty provision for each day the person does not comply with that requirement. The purpose of this provision is to ensure that the requirement to comply with a relevant direction is ongoing until followed, and the civil penalty provisions apply accordingly.

Subdivision B – Application of civil penalty provisions

Clause 88 provides that the civil penalty provisions created under this part apply to a contravention that occurs on or after the 28th day after the day on which this Act receives the Royal Assent.

Subdivision C – Injunctions

Clause 89 provides that if a person has engaged or is engaging in conduct or has refused or is refusing or failing to do an act or thing that would contravene this Part (other than a contravention in relation to **Division 4**) the Federal Court may, on the application of the Minister or any person whose interests have or might be affected by such conduct, grant an injunction on terms the Court considers appropriate. The Court may also grant an interim injunction pending the determination of a relevant application. If an interim injunction is granted the Court must do so without requiring any undertakings from the relevant parties in relation to damages.

Part 6 – Bail and sentencing

On 14 July 2006, the Council of Australian Governments (COAG) agreed that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse. All jurisdictions agreed that their laws would reflect this, if necessary by future amendment. COAG also agreed to improve the effectiveness of bail provisions in providing support and protection for victims and witnesses of violence and sexual abuse.

The Commonwealth implemented the COAG decision through the *Crimes Amendment (Bail and Sentencing) Act 2006* (the Bail and Sentencing Act) which applies to bail and sentencing discretion in relation to Commonwealth offences. The Bail and Sentencing Act amended the *Crimes Act 1914* (the Crimes Act) to preclude consideration of customary law or cultural practice from sentencing discretion and bail hearings as a reason for excusing, justifying, authorising, requiring or lessening the seriousness of the ***criminal behaviour*** to which the offence or alleged offence relates. The amendments also preclude consideration of customary law or cultural practice as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates.

The Bail and Sentencing Act also inserted provisions into the Crimes Act requiring the relevant authority to consider the potential impact on victims and witnesses, and specifically the potential impact on victims and witnesses in remote communities, when granting and imposing bail conditions for Commonwealth offences.

While Northern Territory legislation does not make specific provision regarding the consideration of customary law or cultural practice in bail hearings, the Government wishes to ensure that it is clear that such matters must not be taken into consideration as lessening or aggravating the seriousness of the alleged offender's criminal behaviour.

Although Northern Territory legislation requires a court to consider the protection and welfare of the community in bail applications, it does not specifically require the court to consider the potential impact on victims and witnesses in remote communities.

Northern Territory legislation lists the factors a court shall have regard to in sentencing an offender. This list refers generally to any aggravating or mitigating factor concerning the offender and the extent to which the offender is to blame for the offence, but does not specifically refer to customary law or cultural practice.

The Government wishes to ensure that the decisions of COAG, as implemented by the Bail and Sentencing Act, apply in relation to bail and sentencing discretion for Northern Territory offences.

Section 122 of the *Constitution* provides the Commonwealth with a very broad power to make laws directly regulating Territory matters, including in relation to bail and sentencing. The Commonwealth provisions in **Part 6** will prevail over any inconsistent Territory laws. It is the Government's intention that, if the Northern Territory enacts sufficiently complementary provisions, the amendments made by **Part 6** would be repealed.

Clause 90 sets out certain matters to be considered and matters precluded from consideration, by a ***bail authority*** when granting bail and/or imposing bail conditions on alleged offenders in relation to Northern Territory offences. **Paragraph 90(1)(a)** requires a bail authority to consider the potential impact of the bail authority's actions on victims and potential witnesses.

Subclause 90(2) further requires that where victims and potential witnesses are living in, or located in, a 'remote community', a bail authority in the Northern Territory must take this into account when considering granting bail. This is because remote communities are typically small and isolated, and victims and potential witnesses in such communities face higher risks than others when alleged offenders are released into their communities on bail. This provision will ensure that bail authorities give appropriate weight to the special circumstances of victims and potential witnesses in remote communities.

Remote community is not a defined term. It will be a matter for the bail authority to determine, on the facts of the case, whether an alleged victim or potential witness is located in a remote community.

Paragraph 90(1)(b) prohibits a bail authority from taking into consideration any form of customary law or cultural practice to lessen or aggravate the seriousness of the alleged offender's criminal behaviour – and on that basis influence the decision to grant bail to an alleged offender. A bail authority will still be able to consider customary law or cultural practice in deciding whether to grant bail, but this amendment makes clear that the decision should not be based on whether the criminal behaviour would be assessed as less, or more serious, due to customary law or cultural practice.

Bail authority and criminal behaviour are defined in **clause 3**.

Clause 91 expressly prohibits a court from taking into account customary law or cultural practice as an excuse or justification for criminal behaviour when sentencing a person for having committed a Northern Territory offence, thus preventing a court from reducing the sentence imposed on an offender on the basis of customary law or cultural practice. This clause also precludes a court taking into account customary law or cultural practice as a reason for aggravating the seriousness of criminal behaviour, thus preventing a court from increasing the sentence imposed on an offender on the basis of customary law or cultural practice.

Criminal behaviour is defined in **clause 3**.

Part 7 – Licensing of community stores

Part 7 introduces a new licensing regime applicable to persons who operate community stores in Indigenous communities in the Northern Territory.

Community stores will be assessed by authorised officers who will be empowered to enter the premises of community stores with consent, obtain access to records and documents and request information from persons relating to the assessment of a community store.

Assessments can be initiated by the Secretary without application and are expected to commence shortly after Royal Assent. A person may also apply for a ***community store licence***.

The powers to make licensing decisions (to refuse to grant, grant, vary, revoke, transfer or refuse to transfer) will be vested in the Secretary.

The basis of assessment will be the ***assessable matters*** set out in **clause 93**.

The Minister will have discretion to make guidelines about the assessable matters. These guidelines must be applied when making licensing decisions when issued but, until the guidelines are made, are not a precondition to making licensing decisions.

A non statutory Advisory Board comprised of people appointed by the Minister with expertise in the retail food industry and other relevant fields will provide input, as appropriate, into the assessment process, licensing decisions and the development of the Ministerial guidelines.

Part 7 provides flexibility for conditions to be imposed upon holders of licences such as a requirement to appoint an external or independent manager.

As a last resort, the Commonwealth will also be able to acquire the assets and liabilities of the community store business.

Part 7 is comprised of the following Divisions:

Division 1	Meaning of expressions
Division 2	Assessments of community stores
Division 3	Licensing of community stores
Division 4	Acquisition by the Commonwealth
Division 5	Authorised officers
Division 6	Other matters

Division 1 - Meaning of expressions

Clause 92 defines community store.

Subclause 92(1) provides that a business will be regarded as a community store if:

- one of the main purposes of the business is the provision of grocery items and drinks; and

- the business is carried on at premises located in a prescribed area; or at premises located in an area or place in the Northern Territory or specified premises in the Northern Territory covered by a legislative instrument issued by the Minister under **subclause 123(1)** or **123(2)**.

It is sufficient for the purposes of **subclause 92(1)** that 'one of the main purposes' of the business be the provision of grocery items and drinks. This is intended to cover mixed businesses (which may be co-located with a takeaway food outlet or a fuel outlet) which also sell grocery items and drinks as one of its main purposes.

The reference to prescribed area in **paragraph 92(1)(a)** refers the reader to the definition of prescribed areas contained in **clause 4** of the bill and covers the premises of a community store located on:

- land covered by paragraph (a) of the definition of 'Aboriginal land' in **subclause 3(1)** of the Land Rights Act. This refers to land held by an Aboriginal land trust for an estate in fee simple established under the Land Rights Act and covers the majority of community stores (see **paragraph 4(2)(a)**);

- community living areas as declared under the *Pastoral Leases Act* of the Northern Territory (see **paragraph 4(2)(c)**); and

- areas in the Northern Territory known as town camps and the subject of a declaration by the Minister under **subclause 4(3)** (see **paragraph4(2)(d)**). If the Minister has not made a declaration under **subclause 4(3)** in respect of the town camp in which the store is located, the Minister could still bring a specific business within the definition of 'community store' by exercising his power under **subclause 123(1)** or **123(2)**.

Paragraph 4(2)(b) also covers 'any roads, rivers, streams, estuaries or other areas' as defined. Roadhouses have been excluded from the definition of 'community store' (see **paragraph 92(2)(b)** below) to ensure that these businesses are not covered by the licensing scheme because of the application of **paragraph 4(2)(b)**.

Subclause 92(2) defines what businesses are not to be regarded as community stores as follows:

- a business that is solely a takeaway food shop or a fast food shop (including shops at which takeaway or fast food can be consumed on the premises);

- a roadhouse;

- a business at premises located in an area or place in the Northern Territory or a specified business at premises located in the Northern Territory that is covered by a legislative instrument issued under **subclause 123(3)** or **123(4)**; and

- a business 'of a kind' prescribed by the regulations.

The regulations referred to in **paragraph 92(2)(d)** provide the flexibility to cover other kinds of businesses (in addition to takeaway food shops or roadhouses which are already excluded) that are not to be subject to the definition.

The Secretary, in making licensing decisions will be required to have regard to certain matters described as 'assessable matters'. The assessable matters are relevant to the provision of high quality community store services to Indigenous communities. **Subclause 93(1)** defines the assessable matters. There are five assessable matters as follows:

i. The community store's capacity to participate in, and (if applicable) the community store's record of compliance with, the requirements of the income management regime.

The delivery of the ***income management regime*** may involve arrangements where a portion of a welfare recipient's payment will be paid to an account established for this purpose by a community store so that the recipient can use the amounts credited to purchase food and other goods from the store.

A community store will need to be able to satisfy the Secretary that it has the capacity to participate in the income management regime. This involves consideration of the store's capability to participate in the income management scheme. Alternatively, the community store should be able to demonstrate a sound record of compliance with the requirements of the income management regime.

ii. The quality, quantity and range of groceries and consumer items, including healthy food and drink, available and promoted at the community store.

The assessment of the store will include an examination of the quality, quantity and range of groceries including healthy food and drink. The quality,

quantity and range of other consumer items includes items such as cleaning aids and appliances and other personal hygiene products of importance to the overall health and wellbeing of the Indigenous community.

iii. The financial structure, retail practices and governance practices of the community store;

The assessment of the financial structures of the store may include an assessment of all sources of income and all outgoing expenses of the community store and the balance between the two. The examination of retail practices may include an examination of the pricing strategy of the store, particularly where stores have a near monopoly in communities.

*iv. Any matter specified by the Minister under **subclause 125(2)** to be an assessable matter;*

The Minister will also have the power to determine further assessable matters by legislative instrument under **subclause 125(2)**. This gives flexibility to add further assessable matters if more are identified at a future stage.

v. Any other matter that the Secretary considers relevant to the provision of high quality community store services.

This is intended to give the Secretary capacity to take into account any other matter that is not explicitly addressed in the assessable matters provided that the matter is relevant to the provision of high quality community store services.

Subclause 93(2) is intended to ensure that both the current and future state of affairs is able to be considered in all cases, not just where the person is not a current operator, when considering whether to grant a community store licence to a person. The Secretary may consider the assessable matters:

- as they apply to a community store of which the person is the operator at the time of the consideration; or
- as the person proposes that they will apply in future to a community store of which the person is the operator at the time of the consideration; or a community store that the person proposes to operate, or may operate, in future.

Subclause 93(3) is similar in intent to **subclause 93(2)** and applies for the purpose of considering whether to revoke, vary, transfer or impose conditions upon a community store licence. In this context, the Secretary may consider the assessable matters as they apply to the community store to which the licence relates or will relate at the time of the consideration, or as they are proposed to apply to the store in future.

The Minister may also issue guidelines about how the assessable matters are to apply to various licensing decisions made under **Part 7** (see **clause 125**). These guidelines are not a necessary precondition to the Secretary making various licensing decisions under **Part 7**; however, if the Minister chooses to make these guidelines, they must be taken into account by the Secretary in making licensing decisions.

Division 2 - Assessments of community stores

Subclause 94(1) provides that the Secretary will be able to initiate assessments of community stores without the need for the operator to make an application for the community store licence.

The assessment will be carried out at the premises of the community store by an authorised officer (see **clause 116**) and by other officers assisting the authorised officer. The assessment is for the purpose of deciding whether or not to grant a community store licence to the operator of the store, or deciding whether to revoke, vary, transfer or impose conditions upon a community store licence.

The authorised officers will provide their assessment to the Secretary for decision. It is intended that authorised officers may consult with the independent Advisory Board' in preparing an assessment for submission to the Secretary (see explanation for **subclause 95(3)**).

The provisions in **Division 2** will commence the day after the day the Act receives Royal Assent to enable assessments to begin as soon as possible after Royal Assent is given.

Before an assessment of a community store can be carried out, **clause 95** requires a notice of assessment to be given.

Subclause 94(2) provides that in assessing a community store, an authorised officer must have regard to the assessable matters (see **clause 125**).

Subclause 94(3) enables an authorised officer to consult with such persons as the authorised officer considers appropriate. It is envisaged that for the purposes of this subclause, authorised officers may send their reports initially to an independent Advisory Board. The Advisory Board will be a non statutory Board established by the Minister to advise the Minister and Secretary about the licensing arrangements in general (including the operation of the scheme). The Advisory Board will also provide expert input into the development of the Ministerial guidelines under **clause 125** and provide advice to the Secretary on assessments of community stores as appropriate.

An authorised officer may be required to assess a community store whether or not the operator has made an application under **clause 96** (**subclause 94(4)**).

Clause 95 sets out the requirements for notices of assessment.

Subclause 95(1) requires that before a community store can be assessed the Secretary (or an authorised officer) must give written notice to the operator of the store, advising that the assessment is to take place.

Subclause 95(2) sets out the requirements of the notice of assessment. The notice must specify the day or days on which, or the period within which, entry to the store is required, the name of the authorised officer or authorised officers who will conduct the assessment, the purpose of the assessment (for example, if it relates to a grant or variation of the licence), the matters to which the authorised officer will have regard in making the assessment and the material and documents to which the authorised officer requires access to for the purposes of making the assessment.

Subclause 95(3) provides that the notice must be given at least 7 working days before the assessment is to take place.

Division 3: Licensing of community stores

The powers to grant, refuse to grant, revoke, vary, transfer and refuse to transfer a community store licence are vested in the Secretary. For convenience, the differing types of licensing decisions that can be made are dealt with in different subdivisions within **Division 3**.

Division 3 is structured as follows:

Subdivision A	Granting and refusing to grant community store licences
Subdivision B	Conditions of community store licences
Subdivision C	Revocation and variation of community store licences
Subdivision D	Surrender and transfer of community store licences

Subdivision A – Granting and refusing to grant community store licences.

Clause 96 provides for a mechanism for persons to apply for a community store licence (it will be unnecessary for current operators of community stores to apply for a community store licence as such persons and their premises will be liable to be assessed at the initiative of the Secretary after Royal Assent; however, a current operator could choose to do so if they wish). This clause is primarily aimed at other persons (other than current operators) who may wish to apply for a licence to operate a community store.

Subclause 96(2) requires the application to be made in the form (if any) specified in writing by the Secretary. The application form may specify the information to be included in an application and the documents or other material that must accompany an application: **subclause 96(3)**.

With respect to decisions to grant or refuse a community store licence, **subclause 97(1)** places an obligation on the Secretary to decide whether or not to grant a community store licence to a person if the person is the operator of a community store and the store has been assessed under **clause 94** or if the person has applied under **clause 96** for a community store licence.

In addition, the Secretary may grant a community store licence to a person on the Secretary's own initiative without the need for an application to be made: **subclause 97(2)**.

Subclause 97(3) provides that a community store licence cannot be granted to a person unless the Secretary is satisfied that, if the licence is granted, the community store or stores to which the licence relates will be operated in a satisfactory manner, having regard to:

- the assessable matters; and

- if the person is an operator of a community store or community stores that have been assessed under **clause 94** - the assessment or assessments; and

- any other matter the Secretary considers relevant.

Subclause 97(4) provides that the Secretary may refuse to grant a community store licence to a person if:

- in the case of a person who is an operator of a community store – if the person unreasonably withholds consent under **clause 118** for an authorised officer to enter the premises of the community store or if the person unreasonably refuses to provide documents, material or assistance as required by **clause 119**; or

- in any case where the person does not give the Secretary sufficient documents, material or assistance to enable the Secretary to make an informed decision.

Clause 98 enables a community store licence to relate to more than one store. A community store licence may be expressed to relate to a specified community store or stores or to all community stores.

Clause 99 sets out the processes that must occur before the Secretary can refuse to grant a community store licence. These procedures provide the person with an opportunity to make written submissions on the proposed refusal. These submissions must be taken into account before the decision can be made if made within time.

If the Secretary proposes to refuse to grant a community store licence, **subclause 99(1)** requires the Secretary to notify the operator (if the store has been assessed under **clause 94**) or the person who has applied for the licence under **clause 96** of the proposed refusal.

Subclause 99(2) sets out the requirements for the notice. The notice must be in writing; state the reasons for the proposed refusal (for example identify the particular assessable matter that is of concern) and invite the person to make written submissions. The notice must also specify the deadline for making submissions to the Secretary and specify the address where submissions are to be lodged.

Subclause 99(3) requires that the recipient of the notice be given at least seven working days after the day on which the notice is given to provide the submissions to the Secretary.

Subclause 99(4) provides that the Secretary may refuse to grant a community store licence only if the person required to be given a notice under **subclause (1)** has been given such a notice and the Secretary has considered any submission made by the person by the day mentioned in **paragraph 99(2)(d)**.

Clause 100 sets out the duration of a community store licence. A community store licence has effect for the period beginning on the day specified in the licence or, if no day is specified, the day on which the licence is granted; and ending on whichever of the following days occurs first:

- the day specified in the licence as the day on which the licence ceases to be in effect;
- the day on which the licence is revoked;
- the day on which the licence is surrendered; or
- the day on which this Part ceases to have effect.

It is intended that community store licences will be granted to operators of community stores for an initial period of six months. Stores will then be liable to a further assessment by authorised officers before the end of the six months with a view to the Secretary making a further decision either not to grant a licence or to vary the existing licence by extending its term for a further period as appropriate.

Subclause 101 requires notice of the decision to be sent to the operator. If the Secretary decides to grant a community store licence, the Secretary must give written notice of the decision to the person who will be the holder of the licence and attach a copy of the licence.

Similarly, under **subclause 101(2)**, if the Secretary decides to refuse to grant a community store licence, the Secretary must give written notice of the decision to the person who is the operator of the store (if store assessed under **clause 94**) or to the person who has applied (if the person has applied under **clause 96** for the community store licence).

Subclause 101(3) provides that the notice must specify the reasons for the refusal.

A decision to refuse to grant a community store licence will not be subject to internal review or to external review by the Administrative Appeals Tribunal (AAT). Given the emergency response, opening the licensing process to review could unduly prolong matters before action to improve the operation of community stores could be confirmed and hence such review processes are not considered appropriate in the circumstances. The processes that are required to be followed before a decision to refuse to grant a licence can be made by the Secretary provide the person concerned with an appropriate opportunity to address any areas of concern.

Subdivision B—Conditions of community store licences

All community store licences will be subject to a number of statutory conditions as listed in **clause 102**. These conditions are:

- the condition set out in **clauses 104** (satisfactory performance), **105** (monitoring and audits) and **110** (transfer);
- the conditions (if any) specified by the Minister under **clause 124**;
- the conditions (if any) imposed by the Secretary at the time of issuing the licence; and
- the conditions imposed by the Secretary under **clause 107** after the licence is issued.

Additional conditions may also be specified or imposed on holders of communities store licences. **Subclause 103(1)** provides that licence conditions that are specified by legislative instrument or imposed by the Secretary under **clause 102** may relate to, but are not limited to, the following:

- assessable matters (including but not limited to specifying standards to be met in relation to the assessable matters);
- documentation and record-keeping requirements;
- the income management regime (including but not limited to requirements relating to funds);
- auditing and reporting;

- assistance and facilities to be provided for the purposes of making assessments or monitoring compliance with the conditions of the licence.

It is also intended that other persons with a proven record in providing high quality community store services may also be brought in to assist a person who is currently operating a community store. **Subclause 103(2**) gives the Secretary power to impose a licence condition which may require the operator of a community store to take such steps as are specified in the condition in relation to appointing an external or independent manager (however described) of the community store.

The holder of a community store licence will have a continuing obligation to operate the store in a satisfactory manner having regard to the assessable matters. **Clause 104** imposes this as a condition on all licences.

A condition is also imposed on all holders of community stores with respect to monitoring and audits. **Subclause 105(1)** provides that it is a condition of a community store licence that the holder of the licence must:

- allow the Secretary or an authorised officer to enter the premises of the store or stores to which the licence relates for the purposes of auditing or monitoring compliance with the conditions of the licence; and

- allow the Secretary or an authorised officer to inspect things at the premises; and

- if requested, produce to the Secretary or an authorised officer documents and materials relevant to auditing and monitoring compliance.

Subclause 105(2) clarifies that **subclause (1)** does not limit the conditions that may be imposed by the Secretary in the licence or by legislative instrument.

Subdivision C—Revocation and variation of community store licences

The Secretary may revoke the licence held by an operator under **clause 106**. **Subclause 106(1)** provides that the Secretary may, by notice in writing given to the holder of a community store licence, revoke the licence if:

- the Secretary believes on reasonable grounds that a condition of the licence has been breached; or

- the Secretary believes on reasonable grounds that the licence holder, or a person covered by the licence, has committed an offence against this Act; or

- the licence was obtained improperly; or

- the Secretary is satisfied that the store is not being operated in a satisfactory manner having regard to the assessable matters.

Subclause 106(2) states that the revocation takes effect on the date on which the notice is given or on a later date specified in the notice.

The Secretary may also under **clause 107** vary a community store licence held by an operator of a community store.

The Secretary will have discretion under **subclause 107(1)** to vary a community store licence by notice in writing given to the licence holder at any time on the Secretary's own initiative or if the licence holder applies for a variation.

Subclause 107(2) sets out the requirements for an application for a variation for the purposes of **paragraph 107(1)(b)**. The application must be in writing, and must contain such information as is prescribed by the regulations (if any); and such information (if any) as is specified in writing by the Secretary.

In exercising the powers of variation, **subclause 107(3)** the Secretary can impose licence conditions or additional licence conditions; remove or vary licence conditions that were imposed by the Secretary or extend the licence.

The Secretary must not vary a licence unless the Secretary is satisfied that the variation will not detract from the satisfactory operation of the community store, having regard to the assessable matters: **subclause 107(4)**.

The variation takes effect on the date on which the notice is given or on a later date specified in the notice by the Secretary: **subclause 107(5).** A variation to extend the period of effect of a licence can be backdated to prior to the day on which the notice is given (**subclause 107(6)**), this power, for example, enables continuity, where, for example, the initial licence granted to an operator under **clause 97** has expired before the assessment process could be completed or the decision made.

Subclause 107(7) gives the Secretary discretion to refuse to vary a licence if a person unreasonably withholds consent for an authorised officer to enter the premises of the community store under **clause 118**; or unreasonably refuses to provide documents, material or assistance as required by **clause 119**. The Secretary may also refuse to vary a licence if the holder of the licence does not give the Secretary sufficient information to make an informed decision.

Similar processes apply before a decision can be made revoking or varying a community store licence under **clause 108** as provided for under **clause 99** in relation to a proposal to refuse to grant a licence. These procedures provide the person with an opportunity to make written submissions on the proposed refusal before the decision can be made.

The procedures set out in **clause 108** require the Secretary to do the following if the Secretary proposes to revoke or vary a community store licence.

Subclause 108(1) requires the Secretary to notify the operator of the community store of the proposed revocation or variation.

Subclause 108(2) sets out the requirements of the notice. The notice must be in writing, specify the reason for the proposed revocation or variation, invite the person to make written submissions in relation to the proposed revocation or variation, specify the deadline by which submissions should be given and specify an address where submissions are to be lodged.

Subclause 108(3) requires that the recipient of the notice be given at least seven working days after the day on which the notice is given to provide submissions.

Subclause 108(4) provides that the Secretary may revoke or vary a community store licence only if the person required to be given a notice under **subclause 108(1)** has been given such a notice and the Secretary has considered any submission made by the person by the day mentioned in **paragraph 108(2)(d)**.

Subclause 108(5) clarifies that **clause 108** applies to a proposed refusal to vary a licence for which the holder has applied under **clause 107**.

Decisions under **Subdivision C** will not be formally subject to internal review and review by the Administrative Appeals Tribunal. Given the emergency response, opening these decisions to such review could unduly prolong matters before action to improve the operation of community stores could be confirmed and hence such review processes are not considered appropriate in the circumstances. The processes that are required to be followed before such decisions can be made provide the person concerned with an appropriate opportunity to address any areas of concern.

Subdivision D—Surrender and transfer of community store licences

Clause 109 provides that the holder of a community store licence may, by written notice given to the Secretary, surrender the licence.

Subclause 110(1) clarifies that it is a condition of a community store licence that, if there is to be a change in operator of the store to which the licence relates, the operator who holds the licence and the person who is to become the operator (the ***transferee***) must notify the Secretary of the proposed change of operator and apply for transfer of the licence.

Subclause 110(2) requires that the application for transfer of a licence be in writing, and must contain such information as is prescribed by the regulations (if any) and such information (if any) as is specified in writing by the Secretary.

The Secretary must not transfer the licence unless the Secretary is satisfied that the transfer will not detract from the satisfactory operation of the community store, having regard to the assessable matters: **subclause 110(3).**

Subclause 110(4) provides the Secretary with the discretion to refuse to transfer a community store licence on a similar basis as set out in **subclause 107(7)** for variation.

The formalities for transfer of a licence are set out in **clause 111**.

Subclause 111(1) requires the Secretary to give written notice of his or her decision on the transfer application.

If the Secretary decides to transfer the licence, then **subclause 111(2)** clarifies that the transfer takes effect on the date specified in the notice and the licence continues in force and is subject to the same conditions as those in force immediately before the transfer.

Division 4 —Acquisition by the Commonwealth

Clause 112 confers powers on the Commonwealth to acquire the community store's assets and liabilities. These powers complement the Commonwealth's powers in relation to the powers to acquire rights, titles and interests in land (see **Part 4** of the bill). With respect to assets, given the existence of **Part 4** of the bill, the powers of acquisition in **Part 7** are limited to 'eligible assets'.

It is recognised that such action may give rise to a claim for compensation for acquisition of the property concerned. **Clause 134** (see **Part 8**) comprises a 'historic shipwrecks' clause for this purpose.

The Minister's powers contained in **Division 4** are discretionary and intended to be used after all other options are exhausted.

The question whether these powers should be invoked arises after the conclusion of a process where the Secretary has made a decision not to grant a community store licence, a decision not to vary a licence by extending its term or a decision to revoke a licence. Prior to the Secretary making these licensing decisions, the person concerned would have had an opportunity to make written submissions in relation to the proposed refusal to grant or proposed revocation or variation and these submissions (provided they were made within time) would have been taken into account by the Secretary. In addition, the Advisory Board would have been consulted and its expertise utilised as part of the process. Other options would have been examined and exhausted including, for example, the option of imposing a condition on the holder of a licence under **subclause 103(2)** to take such steps in relation to appointing an external or an independent manager (however described) of the community store.

In exercising the powers of acquisition, the Commonwealth is also acquiring the liabilities of a community store. If a community store is currently insolvent or its liabilities exceed its assets than acquisition of the store may represent the preferred outcome for the operator concerned.

Subclause 112(1) provides that the clause applies to eligible assets that are held by a community store (or by the owner or operator of a community store) and to liabilities of the store or of the owner or operator if:

- an authorised officer has assessed the community store under **clause 94** for the purpose of deciding whether or not to grant a community store licence and the Secretary has decided not to grant the licence; or

- an authorised officer has assessed the community store under **clause 94** for the purpose of deciding whether or not to vary a community store licence and the Secretary has decided not to extend the term of the licence; or

- the Secretary has revoked a community store licence.

Subclause 112(2) gives the Minister the discretion to make any or all of the specified declarations in relation to some or all of the eligible assets (or liabilities) to which this clause applies. The declarations that can be made are:

- a declaration that the legal and beneficial interests in the assets vest in the Commonwealth at a specified time without any conveyance, transfer or assignment;

- a similar declaration in respect of the liabilities to that referred to in (a);

- a declaration that a specified instrument relating to any or all of the assets or liabilities continues to have effect after they have vested in the Commonwealth as if a reference in the instrument to a specified person were a reference to the Commonwealth;

- a declaration that, immediately after the assets or liabilities vest in the Commonwealth, the Commonwealth becomes the successor in law of the holder of those assets.

A declaration under **subclause (2)** has effect accordingly: **subclause 112(3)**.

Subclause 112(4) provides that a copy of a declaration made under **subclause 112(2)** must be given to the owner or operator of the community store; and published in the Commonwealth *Gazette* within 7 days of being given to the owner or operator.

A failure to comply with **subclause 112(4)** does not invalidate a declaration (**subclause 112(5)**).

A declaration under **subclause 112(2)** is not a legislative instrument: **subclause 112(6)**.

Subclause 112(7) provides that stamp duty or other tax is not payable under a law of the Northern Territory in respect of the vesting of an asset under this clause; or anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, such vesting.

Subclause 112(8) defines ***eligible asset*** to mean:

- any legal or equitable estate or interest in personal property, whether actual, contingent or prospective held by a community store, or by the owner or operator of a community store, being an estate or interest that relates to the operations of the community store; or

- any right, power, privilege or immunity, whether actual, contingent or prospective held by a community store, or by the owner or operator of a community store, being a right, power, privilege or immunity that relates to the operations of the community store.

'Eligible asset' is limited to 'any legal or equitable estate or interest in personal property'. It is intended to apply to assets of a community store such as (for example and without limiting the personal property that may be covered) moveable refrigeration units, shelving, cash registers, stock in trade, etc owned by the store.

Subclause 112(8) also defines ***liability*** in the broadest of terms to mean any liability, duty or obligation, whether actual, contingent or prospective, of a community store being a liability that relates to the operations of the community store.

Clause 113 provides for certificates to be issued relating to vesting of eligible assets.

Subclause 113(1) provides that the clause applies if an eligible asset vests in the Commonwealth and there is lodged with an assets official a certificate signed by the Minister that identifies the asset which states that the asset has become vested in the Commonwealth under **clause 112**.

The note to **subclause 113(1)** clarifies that certificates under **paragraph 113(1)(b)** are presumed to be authentic (see **clause 115**).

Once a certificate is lodged with an assets official, **subclause 113(2)** provides that the assets official may:

- deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and

- make such entries in the register in relation to assets of that kind as are necessary having regard to the effect of this Part.

Subclause 113(3) clarifies that the reference to an ***assets official***, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

Clause 114 clarifies what happens in the event the community store is involved in legal proceedings (in a court or tribunal) relating to an asset or liability that vests in the Commonwealth) immediately before commencement of the bill. This clause provides for the substitution of Commonwealth as a party to pending proceedings. In circumstances where this clause applies, the Commonwealth is substituted for the community store or the owner or operator, from the commencement of this clause, as a party to the proceedings.

Clause 115 provides that a document that appears to be a certificate made or issued under this Division is taken to be such a certificate and is taken to have been properly given unless the contrary is established.

Division 5—Authorised officers

The powers of authorised officers which undertake assessments of community stores in the field are found in **Division 5**.

Subclause 116(1) provides that the Secretary may, in writing, appoint an appropriately qualified officer to be an authorised officer for the purposes of the exercise of the powers conferred on authorised officers by this Part.

Subclause 116(2) clarifies that ***officer*** means an APS employee in the Department or any other person engaged by the Department, under contract or otherwise, to exercise powers, or perform duties or functions, under this Part.

Clause 117 empowers the Secretary to issue identity cards to an authorised officer in the form approved by the Secretary. The identity card must contain a recent photograph of the authorised officer.

Subclause 118(1) empowers an authorised officer to enter the premises of the community store for the purposes of assessing a community store under **clause 94**. That is an assessment can be made for the purposes of deciding whether or not to grant a licence, or deciding whether to revoke, vary, transfer or impose conditions upon a community store licence.

Before an authorised officer can enter the premises of a community store for the purposes of assessing it, the occupier of the premises (or another person who apparently represents the occupier) must have consented to the entry and the officer has shown his or her identity card if required by the occupier: **subclause 118(2)**.

The note to **subclause 118(2)** reminds the reader that if consent is unreasonably withheld, the Secretary may refuse to grant a licence: see **subclause 97(4)**.

The occupier of the premises or another person who apparently represents the occupier can withdraw their consent to entry at any time. If this occurs then **subclause 118(3)** provides that the authorised officer must leave the premises if the occupier, or another person who apparently represents the occupier, asks the authorised officer to do so.

Clause 119 empowers authorised officers to obtain access to records and assistance and as **subclause 119(1)** provides, the clause applies if an authorised officer is assessing a community store under **clause 94**.

Subclause 119(2) provides that the operator of the community store, the occupier of premises of the store, or another person who apparently represents the occupier, must, if requested, produce to an authorised officer, or any other person assisting the authorised officer, such documents and material as are reasonably necessary for the authorised officer to make the assessment. An offence attracting a penalty of 60 penalty units applies for non-compliance with this requirement. This penalty is commensurate with the penalty applicable to a provision in the *A New Tax System (Family Assistance)(Administration) Act 1999* and applicable to occupiers of child care services that has a similar purpose (section 219L).

In addition, the operator of the community store, the occupier of premises of the community store, or another person who apparently represents the occupier, must provide the authorised officer, or any other person assisting the authorised officer, with such assistance and facilities as are necessary and reasonable for making the assessment (**subclause 119(3)**). An offence attracting a penalty of 10 penalty units applies for non-compliance with this requirement. The penalty of 10 penalty units is at the lower end of the scale.

Subclause 119(4) clarifies that the offences contained in **subclauses 119(2)** and **(3)** are offences of strict liability. The note to this subclause signposts the reader to section 6.1 of the Criminal Code for a definition of strict liability. These offences are strict liability offences because:

- the prosecution would have great difficulty in proving fault (especially knowledge or intention);

- the offences in question are minor;

- the requirements that must be complied with are administrative in nature;

- the elements of these offences are factual;

- the offence does not involve dishonesty or any other serious imputation affecting the person's reputation; and

- compliance with the requirement to provide access to information and reasonable assistance and facilities is essential to the assessment process which supports the licence decision making process.

In addition to the above powers, authorised officers under **clause 120** have the power to request information from persons relating to the assessment of a community store. This power is important as some documentation may be retained with advisers and other persons and not on the premises of the community store.

Subclause 120(1) clarifies that the clause only applies to a person if the Secretary has reason to believe that information (called compellable information) relating to the assessment of a community store under **clause 94** is in the person's possession, custody or control (whether held electronically or in any other form).

If the Secretary has reason to believe that such information is in the person's possession, custody or control, **subclause 120(2)** provides that the Secretary may, in writing, require the person to give specified compellable information to the Secretary within a specified period of time; and in a specified form or manner.

Subclause 120(3) provides that the person receiving a notice under **subclause 120(2)** must not fail to comply with a requirement under this **clause**. An offence attracting a penalty of 10 penalty units applies for non-compliance. **Subclause 120(3)** is subject to two defences.

The first defence to **subclause 120(3)** in **subclause 120(5)** provides that **subclause 120(3)** does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is of a commercial nature; or subject to an obligation of confidentiality arising from a commercial relationship; or commercially sensitive.

The second defence applicable to **subclause 120(3)** is in **subclause 120(6)** and clarifies that **subclause 120(3)** does not apply in relation to compellable information covered by **paragraph 120(1)(b)** if giving the information might tend to incriminate the person or expose the person to a penalty.

Subclause 120(4) provides for a further offence. A person must not, in compliance with a requirement under **clause 120**, give to the Secretary information that is false or misleading in a material particular. An offence attracting a penalty of 60 penalty units applies should information be given to the Secretary that is false or misleading in a material particular.

Subclause 120(7) clarifies that this clause has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

Division 6 - Other matters

Division 6 is structured as follows:

Subdivision A	Interaction with other laws
Subdivision B	Legislative instruments
Subdivision C	Other matters

Subdivision A - Interaction with other laws

With respect to the application of the laws of the Northern Territory to community stores, **clause 121** clarifies that to the extent that a law of the Northern Territory is capable of operating concurrently with this Part, this Part does not affect the application of the law to a community store or to the operator of a community store. This means Northern Territory legislation such as the *Food Act* still apply.

Clause 122 clarifies the interaction with other Commonwealth laws, in particular the *Trade Practices Act 1974*. This provision has been included because in licensing a community store there are a number of broad areas where the *Trade Practices Act 1974* could potentially limit the Commonwealth's ability to improve the quality of the service provided by particular stores and to assist welfare recipients in managing their income. The exception provisions of the *Trade Practices Act 1974* are invoked in this bill by this section.

Subclause 122(1) clarifies that **Part 7** has effect despite any other law of the Commonwealth.

Subclause 122(2) is made for the purposes of subsection 51(1) of the *Trade Practices Act 1974* and clarifies the following things that are to be regarded as specified in this clause and specifically authorised by this clause:

(a) granting a community store licence;

(b) refusing to grant a community store licence;

(c) imposing or specifying a condition of a community store licence;

(d) varying or refusing to vary a community store licence (including by extending or refusing to extend its period of effect or varying or refusing to vary the conditions to which it is subject);

(e) revoking a community store licence;

(f) transferring a community store licence;

(g) taking any action in connection with an action referred to in paragraph (a), (b), (c), (d), (e) or (f);

(h) taking any action (including but not limited to an action taken by the Commonwealth, a Commonwealth authority, the holder of a community store licence or a person acting in accordance with a community store licence), being an action that is:

(i) required by a community store licence; or
(ii) authorised by a community store licence; or
(iii) in connection with an action referred to in subparagraph (i) or (ii); or

(i) acquiring an eligible asset under **clause 112**.

Subdivision B - Legislative instruments

Clause 123 provides that the Minister may make the following instruments in relation to the meaning of community store*:*

- The Minister may, by legislative instrument, specify an area or place for the purposes of **subparagraph 92(1)(b)(ii)**.

- The Minister may, by legislative instrument, specify premises for the purposes of **subparagraph 92(1)(b)(iii)**.

- The Minister may, by legislative instrument, specify an area or place for the purposes of **paragraph 92(2)(c)**.

- The Minister may, by legislative instrument, specify premises for the purposes of **paragraph 92(2)(d)**.

The power to make these instruments provides the necessary flexibility in relation to the definition of community store by enabling further stores to be added or removed from the licensing requirements.

These instruments are subject to the usual requirements under the Legislative Instruments Act such as disallowance by Parliament.

Clause 124 provides that the Minister may, by legislative instrument, specify conditions to which community store licences are subject.

Instruments made under this clause are subject to the usual requirements under the Legislative Instruments Act such as disallowance by the Parliament.

Subclause 125(1) gives the Minister discretion, by legislative instrument, to issue guidelines relating to either or both of the following the consideration of assessable matters by authorised officers when assessing a community store under **clause 94** or the Secretary's consideration of assessable matters when considering whether or not to grant, revoke, vary, transfer or impose conditions upon a community store licence. Advice from the independent Advisory Board will be sought in the development of these guidelines.

Subclause 125(2) empowers the Minister, by legislative instrument to specify one or more matters to be assessable matters for the purposes of **subclause 93(1)(d)**.

Subclause 125(3) provides that if guidelines under **subclause125 (1)** are in force, an authorised officer or the Secretary (as the case requires) must comply with the guidelines in assessing a community store or considering whether or not to grant, revoke, vary, transfer or impose conditions upon a community store licence.

Subclause 125(4) clarifies that licensing decisions can proceed should no guidelines be in place. An authorised officer may assess a community store, and the Secretary may grant or refuse to grant, revoke, vary, transfer or impose conditions upon a community store licence, even if no guidelines are in force under this clause and whether or not the Minister has specified matters under **subclause 125(2)**.

Instruments made under this clause are subject to the usual requirements under the Legislative Instruments Act, such as disallowance by the Parliament.

Subdivision C - Other matters

Clause 126 clarifies that in making a decision under the income management regime being a decision that may result in a payment or benefit of any kind being made to or received by a person who is the owner or operator of a community store, the decision maker may have regard to whether or not the operator of the community store holds a community store licence.

Clause 127 clarifies that the offences created by **Part 7** apply to conduct engaged in on or after the 28th day after the day on which this Act receives the Royal Assent**.**

Part 8 – Miscellaneous

Subclause 128(1) provides that the Minister may, in writing, delegate to the Secretary, an SES employee or acting SES employee in the Department any of the Minister's functions or powers under this Act. However, the Minister may not delegate to any of those persons any power referred to in **Division 4** of **Part 5** (Commonwealth management in business management areas). **Subclause 128(3)** provides that the Secretary may, in writing, delegate to an SES employee or acting SES employee in the Department any of the Secretary's functions or powers under this Act.

Clause 129 provides that, to the extent that an Act or regulations of the Northern Territory are modified by this Act or regulations made under this Act, the *Interpretation Act* of the Northern Territory, and any other Northern Territory Acts of general application, apply in relation to this Act or regulations made under this Act.

Subclause 130(1) provides that a reference in a law of the Commonwealth, or a law of the Northern Territory, to a law of the Northern Territory includes a reference to a law of the Northern Territory as modified by this Act or regulations made under this Act.

Subclause 130(2) is a similar provision to **subclause 130(1)** except that it refers to offences against a law of the Northern Territory.

Subclause 130(3) provides that references in a law of the Commonwealth, or a law of the Northern Territory to a law of the Commonwealth, does not include a reference to a law of the Northern Territory as modified by this Act or regulations under this Act.

Subclause 130(4) provides that a reference in a law of the Northern Territory to a particular law of the Northern Territory includes a reference to that law as modified by this Act or regulations made under this Act.

Clause 131 provides that section 49 of the *Northern Territory (Self-Government) Act 1978* does not apply to the operation of this Act. Section 49 provides that trade, commerce and intercourse between the Territory and the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. While the regulation of the movement of alcohol and pornographic material may be consistent with section 49, **clause 131** was included to make it clear that the provisions in the bills, and in particular those relating to the movement of alcohol or prohibited pornographic material from outside Northern Territory were not to be read as being subject to section 49 of the *Northern Territory (Self-Government) Act 1978*.

Clause 132 ensures that this Act, and all actions and omissions in any way related to it, are deemed to be special measures and are also excluded from the operation of Part II of the *Racial Discrimination Act 1975*.

Subclause 132(1) provides that, for the purposes of the *Racial Discrimination Act 1975*, the provisions of this Act, and all actions and omissions in any way related to it, are deemed to be special measures. Article 1.4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that 'Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.'

Subclause 132(2) provides that this Act, and all actions and omissions in any way related to it, are excluded from Part II of the *Racial Discrimination Act 1975*. Part II of the *Racial Discrimination Act 1975* includes subsections 9(1), 9(1A) and section 10. **Subclause 132(2)** overlaps with **subclause 132(1)**.

The Northern Territory national emergency response announced by the government recognises the importance of prompt and comprehensive action as well as Australia's obligations under international law:

- The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.

- Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination In fact, the right not to be discriminated against is violated when Governments, without objective and reasonable justification, fail to treat differently people who's situations are significantly different.

The impact of sexual abuse on indigenous children, families and communities is a most serious issue requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties. In doing so, it will take important steps to advance the human rights of the indigenous peoples in communities suffering the crisis of community dysfunction.

In the case of Indigenous people in the Northern Territory, there are significant social and economic barriers to the enjoyment of their rights to health, development, education, property, social security and culture.

The emergency measures in the bill are the basis of action to improve the ability of indigenous peoples to enjoy these rights and freedoms. This cannot be achieved without implementing measures that do no apply in other parts of Australia. In a crisis such as this, the measures in the bill are necessary to ensure that there is real improvement before it is too late for many of the children. The bill will provide the foundation for rebuilding social and economic structures and give meaningful content to indigenous rights and freedoms.

For example, in relation limiting the availability of alcohol, some measures apply across the entire Northern Territory (sales over 1,350ml of alcohol and record keeping) while others apply in communities which are predominantly indigenous, referred to as 'prescribed areas'.

The bill strengthens and extends a number of prohibitions and offences under the Northern Territory Liquor Act in each of the prescribed areas. This will enable alcohol to be controlled in indigenous communities to address the related issues of alcohol misuse and child abuse. Although the alcohol measures apply generally to prescribed areas, individuals can apply for permits and the measures are subject to a five year sunset period.

The bill also grants five year leases to the Government over certain land in the Northern Territory as part of the measures to achieve the object of the Act of improving the well-being of communities in the Northern Territory.

Preventing child abuse depends upon families living in stable and secure environments. Indigenous communities cannot enjoy their social and economic rights equally with non-indigenous people, including their rights over their land, if living conditions in communities are dangerous and their children are subject to abuse. Sustainable housing is a key element to making lasting improvements to community living arrangements.

The leasing provisions are required to allow the Government to address the national emergency in the Northern Territory. The Government cannot build and repair buildings and infrastructure without access to the townships and security over the land and assets.

The leases will not prevent the indigenous communities from living on and using the land, or lead to limitations not connected with the Government's emergency intervention. The existing rights, title and interest of indigenous owners over the leased land are not removed but are preserved and compensation, on just terms, will be given whenever it is payable.

The leases are a short-term measure with the longer-term focus on putting residents of these communities in a position where they can buy their own homes.

Subclauses 133(1) and (2) ensure that this Act, and all actions and omissions in any way related to it, are excluded from the operation of any law of the Northern Territory that in any way relates to discrimination. The purpose of this provision is to ensure that none of the laws of the Northern Territory that relate to discrimination will prevent the implementation of the emergency measures in the bill.

Subclause 133(3) allows the Minister to make a legislative instrument to determine that **subclause 132(1)** does not apply to a particular law of the Northern Territory.

Subclause 133(4) ensures that a reference to acts includes a reference to omissions.

Subclause 134(1) provides that, except for an acquisition of property under **Part 4** of the bill (which deals with the acquisition of rights, titles and interests in land), subsection 50(2) of the *Northern Territory (Self Government) Act 1978* does not apply to an acquisition of property that occurs as a result of the operation of the terms of this bill.

The effect of **subclause 134(1)** is that where subsection 50(2) of the *Northern Territory (Self Government) Act 1978* would apply so as to require the payment of compensation on just terms for an acquisition of property that occurs as a result of the operation of the terms of this bill, that requirement does not apply unless the acquisition occurs under **Part 4**.

Subclause 134(2) provides that the Commonwealth is liable to pay a reasonable amount of compensation for acquisitions of property that occur other than under **Part 4**. Therefore, where an acquisition of property that occurs as a result of the operation of the terms of this bill is excluded from the requirement under subsection 50(2) of the *Northern Territory (Self Government) Act 1978* to pay just terms compensation, **subclause 134(2)** nevertheless requires the payment of a reasonable amount of compensation.

Subclause 134(3) provides that where an amount is unable to be agreed, proceedings may be commenced in a court of competent jurisdiction for a determination of a reasonable amount of compensation.

Subclauses 134(2) and **(3)** are based on section 21 of the *Historic Shipwrecks Act 1976*.

Clause 135 provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Schedule 1 – Property descriptions

Subclause 31(1) provides for a lease to the Commonwealth, by the relevant owner of land referred to, under a heading, in **Parts 1 to 3 of Schedule 1** to the bill. **Part 1 of Schedule 1** deals with Aboriginal land within the meaning of paragraph 3(1)(a) of the Land Rights Act. **Part 2** lists land, commonly referred to as community living areas, granted to associations under subsection 46(1A) of the Lands Acquisition Act. **Part 3** lists two other areas of land which have not been the subject of land grants under that legislation.

Schedule 2 – Business management areas

Schedule 2 lists places for the purposes of paragraph (c) of the definition of business management area in **clause 3**. These are places in which the powers at **Part 5** can be exercised, in addition to those areas described in **Parts 1 to 3 of Schedule 1**.

Schedule 3 – Funding agreements

Schedule 3 sets out the clause referred to in **subclause 65(3)**, which is taken to be included in funding agreements. The clause provides for the termination or reduction in scope of a funding agreement.

Schedule 4 – Commonwealth management in business management areas: modifications of Northern Territory legislation

Schedule 4 sets out the specific modifications made to the Local Government Act and Associations Act by **Division 4**. In particular:

- **Table 1** sets out the modifications to Part 13 of the Local Government Act made in accordance with **subclause 78(3)**; and

- **Table 2** sets out the modifications to Division 2 of Part 9 of the Associations Act made in accordance with **subclause 81(3)**.

Table 1 – Modifications of the Local Government Act of the Northern Territory

Clause 1 omits subsection 241(2) of the Local Government Act, which provides that a person appointed under paragraph 264(2)(b) of that Act to be the manager of a council is an inspector of local government. This reflects the intention that where a person is appointed by the Commonwealth Minister as the manager of a community government council, it is not necessary for the person to also be an inspector of local government.

Clause 2 inserts a new paragraph (f) in subsection 264(1) of the Local Government Act, which sets out the grounds for suspension of all the members of a council. The effect of new paragraph (f) is that, in addition to the existing grounds for suspension under the Local Government Act, the Commonwealth Minister may suspend the members of a community government council if satisfied that the council has failed to comply with a direction under **Division 2 of Part 5** of this bill. **Division 2 of Part 5** deals with giving directions to community services entities in relation to the services and assets in business management areas.

Clause 3 modifies the words of subsection 264(1) of the Local Government Act to remove the need for the Commonwealth Minister to recommend to the Administrator of the Northern Territory that the members of a community government council be suspended. Rather, the Commonwealth Minister may suspend the members of a community government council under that subsection by notice in the Northern Territory *Gazette*.

Clause 4 omits and substitutes subsection 264(2) of the Local Government Act so as to remove the Administrator of the Northern Territory from the process of appointing a manager of a community government council after the members of the council have been suspended. Instead, the Commonwealth Minister must appoint a person to be the manager of the council.

Clause 5 omits from subsections 264(3) and (4) of the Local Government Act references to 'subsection (2)(b)'. This is to reflect the fact that clause 4 substitutes a new subsection 264(2), which does not contain any paragraph (b).

Clause 6 omits from paragraph 264(4)(b) of the Local Government Act the reference to taking action under Part 11 of that Act (which deals with inspections). This reflects the intention that where a person is appointed by the Commonwealth Minister as the manager of a community government council, it is not necessary for the person to also be an inspector of local government.

Clause 7 modifies subsection 264(7) of the Local Government Act to remove the need for the Commonwealth Minister to make a recommendation to the Administrator of the Northern Territory after receiving a report from the appointed manager of a community government council (that is, following the suspension of the members of that council). Rather, the Commonwealth Minister must by notice in the Northern Territory *Gazette* either reinstate or dismiss all the suspended council members.

Clause 8 omits subsections 264A(1) and (3) of the Local Government Act. The omission of subsection 264A(1) reflects the fact that the Administrator of the Northern Territory has no part in the process when the Commonwealth Minister reinstates or dismisses the members of a community government council under subsection 264(1) of the Local Government Act. The omission of subsection 264A(3) removes the requirement for the Commonwealth Minister to table a report in the Northern Territory Legislative Assembly in relation to the dismissal of the members of a community government council, where the Commonwealth Minister dismisses the council members. Instead, the Commonwealth Minister must notify the Northern Territory in accordance with new paragraph 265AA(1)(b), inserted by **clause 12 of Table 1**.

Clause 9 omits section 264B of the Local Government Act, which deals with the appointment of Commissioners to run inquiries. This reflects that the Commonwealth does not intend to take over the Northern Territory's role of inquiring into and investigating matters relating to the dismissal of the members of a community government council.

Clause 10 modifies subsections 264C(1) and 265(1) of the Local Government Act to omit the reference to 'section 264A' and substitute 'subsection 264(7)'. This reflects that where the Commonwealth Minister dismisses the members of a community government council, this would be done under subsection 264(7).

Clause 11 modifies subsection 265(2) to omit 'Administrator' and substitute 'Minister', so that the power conferred by that provision to, in certain circumstances, repeal the constitution of a community government council would be exercisable by the Commonwealth Minister.

Clause 12 modifies Part 13 of the Local Government Act to insert two new sections at the end of that Part:

- New section 265AA provides that the Commonwealth Minister must give written notice to the Northern Territory Minister administering the Local Government Act of the exercise of the Commonwealth Minister's powers under that Act. The intention is that the Commonwealth Minister should keep the Northern Territory informed of actions taken by the Commonwealth under Northern Territory legislation. However, a failure by the Commonwealth Minister to comply with the notice requirements would not invalidate a decision of the Commonwealth Minister.

- New section 265AB deals with the concurrent exercise by the Commonwealth Minister and the Northern Territory Minister of powers under Part 13 of the Local Government Act. The effect is that if the Commonwealth Minister has appointed a manager to a community government council, no person including the Northern Territory Minister may exercise powers under Part 13 of the Local Government Act in relation to the council without Commonwealth consent, until the Commonwealth-appointed manager has ceased to hold office.

Table 2 – Modifications of the Associations Act of the Northern Territory

Clause 1 modifies paragraph 78(1)(d) by inserting 'or the Minister administering the *Northern Territory National Emergency Response Act 2007* of the Commonwealth' after 'Commissioner. This will allow the Commonwealth Minister to provide notice to an incorporated association that the Commonwealth Minister will appoint a statutory manager of the association under section 78 of the Associations Act on grounds that the Minister is satisfied that the association has wilfully contravened a provision of the Associations Act, the Regulations or the association's constitution.

Clause 2 inserts a new paragraph 78(da) after paragraph 78(1)(d). This new paragraph provides that the Commonwealth Minister may appoint a statutory manager if satisfied that the association has wilfully contravened a direction under **Division 2 of Part 5** of the *Northern Territory National Emergency Response Act 2007* of the Commonwealth.

Clause 3 omits 'following an investigation under this Act into the affairs of the association' from paragraph 78(1)(e). The effect of this omission is to remove the requirement that the affairs of an association must first be investigated in accordance with Part 10 of the Associations Act before the Commonwealth Minister is able to appoint a statutory manager of that association on the grounds that the Commonwealth Minister is satisfied that the appointment is in the interests of members or creditors of the association or in the public interest whether because of the financial condition of the association or otherwise.

Clause 4 modifies subsection 80(5) of the Associations Act by adding at the end of that subsection ‘, or a direction under Division 2 of Part 5 of the *Northern Territory National Emergency Response Act 2007* of the Commonwealth.’ The effect of this addition is to ensure that in the event a statutory manager’s appointment to an association is revoked under section 80 of the Associations Act, the statutory manager will still be held to account in the event an association has wilfully failed to comply with a direction under **Division 2** of **Part 5**.

Clause 5 modifies Division 2 of Part 9 of the Associations Act to insert two new sections at the end of that Part:

- New section 85A provides that the Commonwealth Minister must give written notice to the Northern Territory Commissioner of Consumer Affairs administering the Associations Act of the exercise of the Commonwealth Minister’s powers under that Act. The intention is that the Commonwealth Minister should keep the Northern Territory informed of actions taken by the Commonwealth under Northern Territory legislation. However, a failure by the Commonwealth Minister to comply with the notice requirements would not invalidate a decision of the Commonwealth Minister.

- New section 85B deals with the concurrent exercise by the Commonwealth Minister and the Northern Territory Minister of powers under Division 2 of Part 9 of the Local Government Act. The effect is that if the Commonwealth Minister has appointed a statutory manager to an incorporated association, no person including the Northern Territory Commissioner may exercise powers under Division 2 of Part 9 of the Associations Act in relation to the incorporated association without Commonwealth consent, until the Commonwealth-appointed manager has ceased to hold office.